



City of Del Mar Staff Report



TO: Honorable Mayor and City Council Members

FROM: Kathleen A. Garcia, Planning and Community Development Director
Via Scott W. Huth, City Manager
Prepared by Amanda Lee, Principal Planner

DATE: October 15, 2018

SUBJECT: Ordinance Amending the Floodway Zone, Floodplain Overlay Zone, and Coastal Bluff Overlay Zone and Other Actions Related to Del Mar's Plan for Sea Level Rise, Flooding, and Erosion - Local Coastal Program Amendment (LCPA 18-002) and Zone Code Amendment (ZA 16-008)

REQUESTED ACTION/RECOMMENDATION:

Staff recommends the City Council take the following actions:

- 1) Adopt the "Commitment Resolution" (Attachment A) to reiterate the City Council's commitment to continue to reject managed retreat during the Coastal Commission LCPA certification process, and to explain the public process that will occur to solicit community input prior to any future City Council action in response to a Coastal Commission decision on the City's Local Coastal Program Amendments (LCPA).
- 2) Review and confirm that the adopted Resolution (Attachment B), amending the existing certified Local Coastal Program Land Use Plan, accurately reflects the Council action taken on October 1, 2018, to take a measured approach to adaptation that involves monitoring and evaluating shoreline areas for significant trends and changes in conditions (i.e. repetitive flood losses, reduced sandy beach width, and bluff retreat), and to continue to rely on the existing boundaries for the Floodplain Overlay Zone and the Coastal Bluff Overlay Zone.
- 3) Introduce the Ordinance (Attachment C) to amend the existing certified LCP implementing regulations (Zone Code Amendment 16-008/Local Coastal Program Amendment 18-002) by amending Del Mar Municipal Code (DMMC) Chapter 30.29 (Floodway Zone), Chapter 30.55 (Coastal Bluff Overlay Zone), and Chapter 30.56 (Floodplain Overlay Zone); and conduct a second reading of the Ordinance on October 29, 2018.

City Council Action:

EXECUTIVE SUMMARY:

This action is part of an on-going City planning effort (in process since 2015) to plan ahead for projected increases in the frequency and intensity of storms, flooding, erosion, and sea level rise and protect the future viability of Del Mar. The adopted approach has a strong scientific basis and applies an integrated and unified systems approach to adaptation at a local neighborhood scale that protects property, coastal access, the public beach, and coastal resources as follows:

- Implements a flexible approach to monitor significant trends/changes (i.e. repetitive flood losses, reduced sandy beach width, and bluff retreat); with subsequent decisions in a noticed public forum regarding the level of significance of observed changes, and if and when action is needed to pursue additional adaptation measures to further address the hazards and reduce risk
- Protects hundreds of millions of dollars of public and private property
- Preserves the City's high quality beach, parks, lagoons, coastal bluffs, coastal development and public coastal access for future generations
- Reduces risk for the City (property owner with the greatest risk) and its residents by protecting the City economically and planning ahead for public facility, infrastructure, access, and service needs
- Explicitly rejects managed retreat (planned retreat) as a strategy consistent with Del Mar's Community Plan, Adaptation Plan, and certified Local Coastal Program
- Takes a measured approach to minimize negative impacts to property owners while less impactful options are available that meet community expectations

On October 1, the City Council took actions to implement the City's approach as follows:

- Adopted Local Coastal Program Amendment LCPA 16-005 for the Adaptation Plan that was previously approved by the City Council on May 21, 2018.
- Directed staff to prepare and process a Community Plan Amendment to incorporate the Adaptation Plan and local Hazard Mitigation Plan by reference.
- Accepted the supporting technical documents: Vulnerability Assessment, Sediment Management Plan, and Lagoon Wetland Habitat Assessment.
- Directed staff to return to City Council with a Resolution for the benefit of the community to reiterate the City Council's commitment to continue to reject managed retreat during the Coastal Commission LCPA certification process.
- Adopted the Land Use Plan Amendment portion of LCPA 18-002 by Resolution.
- Continued the public hearing for the Ordinance (ZA 16-008)/ LCPA 18-002) with direction to proceed with the code amendments, but with no rezone or expansion of the existing overlay zone boundaries; and to instead rely on the existing Coastal Bluff Overlay Zone map and FEMA map for the Floodplain Overlay Zone.

On October 15, the City Council is being asked to take the following additional actions:

- 1) Adopt the Commitment Resolution (Attachment A).

- 2) Review and confirm that the adopted LCP Land Use Plan Amendments Resolution (Attachment B) accurately reflects the Council action on October 1.
- 3) Introduce the Ordinance (Attachment C) to amend DMMC Chapter 30.29 (Floodway Zone), Chapter 30.55 (Coastal Bluff Overlay Zone), and Chapter 30.56 (Floodplain Overlay Zone) with no change to the overlay zone boundaries.

This will allow the City to submit the Local Coastal Program Amendment package to the California Coastal Commission; and avoid multiple fiscal impacts. The actions show the City is acting in good faith to implement flood management in compliance with FEMA requirements, demonstrate compliance with the Coastal Act, and fulfill City obligations per the LCP grant agreements. By identifying the City's adaptation approach and explicit rejection of managed retreat in the LCP, it will become part of the standard of review for future permit decisions by the City Council and Coastal Commission in the Floodplain and Coastal Bluff Overlay Zones, as applicable.

DISCUSSION/ANALYSIS:

Del Mar's existing shoreline hazard control policies and regulations are part of the City's existing certified LCP, which is the standard of review for decisions on permits for development on coastal bluffs, in the floodplain, and along the beachfront (including seawalls). The proposed LCPA provides greater predictability and certainty for permit applicants, and ensures the City will be eligible for pre-disaster grant money for adaptive/protective projects and for disaster relief assistance/funding (federal and state). Alternatively, a choice to not adopt the LCPA will result in fiscal impacts, increased legal risk, fewer adaptation/mitigation funding opportunities, and increased risk for owners (public and private) seeking permits from the Coastal Commission, as further described in the analysis section of this report and in the report attachments.

The proposed LCP amendments are consistent with the Adaptation Plan, the City's Community Plan (particularly the Environmental Management policies), and certified Local Coastal Program. As proposed, the City will continue to rely on existing permit procedures for approval of shoreline and flood protective structures per the existing certified Local Coastal Program (Beach Overlay Zone). See Attachments E and F for descriptions of Del Mar's Flood Management/Floodplain Development Program and Coastal Development Permit/Local Coastal Program.

The proposed code amendments are summarized as follows:

- Minor amendments to the existing Floodplain and Coastal Bluff Overlay Zones to help disclose projected hazards and clarify permit procedures and regulations.
- Replaced the existing requirement for deed restrictions with other recorded notice.
- Clarified that the existing waiver (for properties with coastal bluffs) does not preclude an owner from applying for future shoreline protection permits per the LCP; and that there is no existing limit on shoreline protection in the Floodplain Overlay Zone.

- Added flexibility for site design on lots with coastal bluffs to allow for reduced yard setbacks without need for a Variance to meet the 40 foot setback from the coastal bluff edge (and to help accommodate reasonable use and avoid potential takings).
- Clarified that structures destroyed by disaster can be rebuilt in conformance with the zone without a Coastal Development Permit (CDP) if they meet specified criteria; and can otherwise be rebuilt subject to a CDP.
- Added a definition of “existing development” (any structure or development that was lawfully established, altered, and maintained per the DMMC or preceding ordinances) to reflect how the existing LCP is implemented and to make it clear to the Coastal Commission that the City does not share its interpretation that existing development only applies to development prior to 1977. The Coastal Commission uses its interpretation as a means to deny permit requests for shoreline protection. However, the City has a discretionary permit process and LCP criteria in place to effectively limit such approvals consistent with the Coastal Act and City policies.
- Clarified there is no intent in applying the LCP to take or damage private property for public use without just compensation (Public Resources Code/Coastal Act 30010).

Floodplain Overlay Zone: The City’s Vulnerability Assessment, United States Geologic Survey (USGS) CoSMoS 3.0, and FEMA’s coastal mapping studies (despite using different methods to assess flooding) all show that Del Mar’s beachfront properties are currently vulnerable to coastal flooding. Each of these studies considered existing seawalls and revetments, and all consistently show the beachfront properties are subject to periodic inundation due to flooding consistent with the purpose of the Floodplain Overlay Zone. As proposed, the City will continue to implement FEMA’s flood maps and regulations via the City’s Floodplain Overlay Zone. As directed by the City Council on October 1, 2018, no expansion of the Floodplain Overlay Zone boundary is proposed with the LCPA. However as explained in Attachment E, FEMA expects an update to the Flood Insurance Rate Map (FIRM) map panel will take effect in 2020. Per existing local and federal regulations, the Floodplain Overlay Zone automatically applies to FEMA designated special flood hazard areas per the current FIRM map in effect (and per any FEMA map updates thereto once effective).

Coastal Bluff Overlay Zone: The City’s Vulnerability Assessment and United States Geologic Survey (USGS) CoSMoS 3.0 show that Del Mar’s upper bluff properties are projected as vulnerable to bluff retreat through year 2100. However, as directed by the City Council on October 1, 2018, the City will continue to rely on the existing Coastal Bluff Overlay Zone boundary. This approach is consistent with the adopted Adaptation Plan, which takes a measured approach to allow the City to monitor, evaluate, and adapt to observed changes in bluff conditions over time. The City is committing to revisit the issue after five years, which will allow the City time to monitor changes in the bluffs and consider the effectiveness of North County Transit District’s bluff stabilization measures for the railroad corridor that are currently in process.

Coastal Commission Review: The proposed Local Coastal Program Amendments are subject to certification by the California Coastal Commission (CCC). San Diego District

CCC staff has worked together with City staff and Sea Level Rise Stakeholder Technical Advisory Committee (STAC) in good faith to help the City prepare and process the amendments per the grant agreement and is supportive of the City's approach (see Attachment G). The City believes the proposed approach complies with the California Coastal Act goals as set forth in Public Resources Code section 30001.5 by maintaining a public beach that is capable of supporting public recreation, maintaining maximum public access to the beach, and protecting the lagoons and other natural resources areas. The City maintains that the proposed LCPA is consistent with the Coastal Act and that the City's proposed strategy will be successful and is "feasible" (capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors) within the meaning of State law (Coastal Act sec. 18.04.010 and Public Resources Code sec. 21061.1 and sec. 30108).

Consistent with State guidance and the grant agreement, the City thoroughly studied and evaluated managed retreat (planned retreat), and identified the planned retreat strategy is not necessary or feasible. As such, the implementing LCP policies and regulations do not impose a strategy of managed retreat.

The proposed Ordinance (Attachment C) further reaffirms the following key points:

- That the proposed amendments follow the State's guidance, but intentionally differ by rejecting managed retreat (planned retreat) and continuing to apply the City's current definition of "existing development" and existing regulations for redevelopment of non-conforming properties in order to recognize local conditions and effectively implement the Community's vision for the future without conflict pursuant to the City's Community Plan, Adaptation Plan, and certified Local Coastal program, including the Beach Preservation Initiative.
- That the North Beach neighborhood is an existing century-old developed area that is designated for development in the Del Mar Community Plan.
- That the North Beach neighborhood is currently protected by a system of seawalls, revetments, and beach street ends that provide for public beach access and protect adjacent private and public development from flooding in accordance with the City's Beach Preservation Initiative and Local Coastal Program.
- That if any segments of this existing integrated and unified system of beach shoreline access and protection were required to be removed, it would unnecessarily threaten the viability of the neighborhood in conflict with the Del Mar Community Plan, Adaptation Plan, and Local Coastal Program.
- That the City's existing certified LCP provides a discretionary permit process to effectively evaluate and consider the merit of any future requests for shoreline protection consistent with the Coastal Act (including Sections 30250 and 30253).

FISCAL IMPACT:

Two State grants (\$311,220) have covered the majority of technical services for this work program. The requested LCPA action would not result in a fiscal impact.

Alternatively, a decision to not adopt the LCPA would result in multiple fiscal impacts:

1) If the LCPA is not adopted by the City, the City would default on its grant agreement with the California Ocean Protection Council and Coastal Commission. Per Grant Agreement Exhibit E Section 7 "Termination," if the City fails to adopt and submit an LCPA per the grant agreement, in addition to other remedies for breach of a contract, the City will be "liable for immediate repayment to the Commission of all amounts dispersed by the Commission under this Agreement, plus accrued interest (rate as set forth by the current Pooled Money Investment Account) and any further costs related to the Project." To date, a total of \$268,042.35 has been dispersed to the City to cover services rendered per the grant agreement and a total of \$43,177.65 (for services completed) is currently being held in reserves by the Coastal Commission until the LCPA is submitted per the Grant Agreement.

2) The Federal Emergency Management Agency (FEMA) determined the City is out of compliance with federal floodplain management requirements in special flood hazard areas for continued participation in the National Flood Insurance Program (NFIP). The proposed LCPA will bring the City into compliance. If the LCPA is not adopted, then the City will be subject to a variety of penalties and fiscal impacts, the most significant being that the City would no longer be eligible for disaster relief assistance or federal grant funding for hazard mitigation. According to FEMA:

- No resident will be able to purchase a National flood insurance policy.
- Existing flood insurance policies will not be renewed. (The City of Del Mar currently has approximately 270 National Flood Insurance Policies.)
- No Federal grants or loans for development may be made in identified flood hazard areas under programs administered by Federal agencies such as HUD, EPA, and SBA;
- No Federal disaster assistance may be provided to repair insurable buildings located in identified flood hazard areas for damage caused by a flood.
- No Federal mortgage insurance or loan guarantees may be provided in identified flood hazard areas. This includes policies written by FHA, VA, and others.
- Federally insured or regulated lending institutions, such as banks and credit unions, must notify applicants seeking loans for insurable buildings in flood hazard areas that there is a flood hazard and that the property is not eligible for Federal disaster relief.

- Del Mar will still be required to enforce the state building codes that either meet or exceed FEMA's standards for residential and non-residential structures in special flood hazard areas.

Additional project level fiscal impact analysis will occur in association with future actions to pursue project level adaptation. The City is currently exploring financing strategies for potential projects relating to the City's identified priority adaptation measures. Approval of the proposed LCPA will help to preserve City eligibility for a range of available grant opportunities for adaptation project planning, design, and construction.

NEXUS TO CITY COUNCIL GOALS AND PRIORITIES:

This matter is on the list of City Council Goals and Priorities.

ENVIRONMENTAL IMPACT:

The proposed actions are exempt from preparation of an environmental document pursuant to CEQA Guidelines Section 15061(b)(3) because this activity is covered by the general rule that CEQA only applies to projects which have the potential for causing a significant effect on the environment. The proposed Amendments disclose potential hazards, do not involve any type of expansion of use or development potential, and would not have a significant effect on the environment.

Furthermore, pursuant to the California Coastal Act and State Guidelines for coastal jurisdictions, the City's existing hazard control policies are a required component of the City's existing certified LCP. Amendments to existing LCP hazard control policies are needed to reflect the latest projections for local hazards based on best available science, which is exempt from preparation of an environmental document pursuant to CEQA Guidelines (14 CCR Section 15265 Statutory Exemption: Adoption of Coastal Plans and Programs). Section 15265 states that CEQA does not apply to activities and approvals pursuant to the California Coastal Act by any local government as necessary for the preparation and adoption of a Local Coastal Program. The CEQA Guidelines shift the burden of CEQA compliance for this action from the City to the CCC.

PRIOR CITY COUNCIL ACTION:

On May 21, 2018, the City Council approved Del Mar's Coastal Resiliency/Sea Level Rise Adaptation Plan (Adaptation Plan), but at the request of a group of owners (in the North Beach neighborhood and along the South Beach upper bluffs), deferred on the decision of whether to adopt Local Coastal Program Amendment (LCPA 16-005).

On October 1, 2018, the City Council took the following actions:

- Adopted Adaptation Plan Local Coastal Program Amendment LCPA 16-005.
- Directed staff to prepare and process a Community Plan Amendment to incorporate the Adaptation Plan and local Hazard Mitigation Plan by reference.

- Accepted the supporting technical documents: Vulnerability Assessment, Sediment Management Plan, and Lagoon Wetland Habitat Assessment.
- Directed staff to return to City Council with a Resolution for the benefit of the community to reiterate the City Council's commitment to continue to reject managed retreat during the Coastal Commission LCPA certification process.
- Adopted the Land Use Plan Amendment portion of LCPA 18-002 by Resolution.
- Continued the public hearing for the Ordinance (ZA 16-008)/ LCPA 18-002) with direction to proceed with the code amendments, but with no rezone or expansion of the existing overlay zone boundaries; and to instead rely on the existing Coastal Bluff Overlay Zone map and FEMA map for the Floodplain Overlay Zone.

Refer to City Council Staff Report (Item 12) dated October 1, 2018 for additional details:
<https://www.delmar.ca.us/DocumentCenter/View/3891/Item-12---LCPA>

ATTACHMENTS:

- Attachment A – Proposed Commitment Resolution
- Attachment B – Adopted Resolution (LCP Land Use Plan Amendments)
- Attachment C – Proposed Ordinance (LCP implementing regulations)
- Attachment D – Revised Strikeout Underline Code Language
- Attachment E – Del Mar's Flood Management/Floodplain Development Program
- Attachment F – Coastal Development Permit Process/Local Coastal Program
- Attachment G – Coastal Commission Comment Letter dated September 28, 2018

RESOLUTION NO. 2018 - _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DEL MAR, CALIFORNIA, CONFIRMING ITS COMMITMENT TO THE ADOPTED LOCAL COASTAL PROGRAM AMENDMENTS AND ITS INTENTION TO REJECT ANY PROPOSED MODIFICATION BY THE COASTAL COMMISSION WHICH SUBSTANTIALLY DEVIATES FROM THE ADOPTED ADAPTATION PLAN AND LOCAL COASTAL PROGRAM AMENDMENTS

WHEREAS, on May 21, 2018 the City Council adopted the Del Mar Sea Level Rise Adaptation Plan (“Adaptation Plan”); and

WHEREAS, on October 1, 2018, the City Council approved the Adaptation Plan as a Local Coastal Program Amendment (LCPA 16-005) and accepted the supporting technical documents including the Vulnerability and Risk Assessment (Vulnerability Assessment), Sediment Management Plan, and Lagoon Wetland Habitat Mitigation Assessment; and

WHEREAS, on October 1, 2018, the City Council approved the amendments to Del Mar’s existing certified Local Coastal Program Land Use Plan (LCPA 18-002); and

WHEREAS, on October 15, 2018, the City Council approved amendments to Del Mar’s existing certified Local Coastal Program implementing regulations relating to the existing Floodway Zone, Floodplain Overlay Zone, and Coastal Bluff Overlay Zone (Zone Code Amendment 16-002/Local Coastal Plan Amendment 18-002); and

WHEREAS, LCPA 16-005 and 18-002 (including Zone Code Amendment 16-002) shall be herein after referred to collectively as “Local Coastal Program Amendments”; and

WHEREAS, the Local Coastal Program Amendments are consistent with the Vulnerability Assessment that was prepared for the City by Environmental Science Associates (ESA) with a supporting Addendum (2018) that explains the changes in the science since the initial assessment in 2016; and

WHEREAS, the Vulnerability Assessment identifies that future viability of the City of Del Mar is threatened by projected sea level rise, storm surge, coastal flooding, river flooding, or erosion and that long term planning is necessary to increase resiliency; and

WHEREAS, Del Mar is a coastal city with a certified Local Coastal Program (LCP) that is required pursuant to the California Coastal Act to contain hazard control policies and regulations to effectively address safe development, public access, habitat, wildlife, scenic views, priority land uses, wetlands, and agriculture; and

WHEREAS, processing of the Local Coastal Program Amendments is necessary to add, modify, remove, and update the existing LCP to clarify the City’s desired adaptation approach for long term resiliency and to remove any conflicts with the existing LCP; and

WHEREAS, the Local Coastal Program Amendments are subject to certification by the California Coastal Commission; and

WHEREAS, the City Council adopted a wide range of adaptation options and strategies to achieve compliance with the Coastal Act goals as set forth in Public Resources Code section 30001.5; and

WHEREAS, Del Mar's Adaptation Plan and local hazard mitigation strategy was designed to be in full compliance with Del Mar's Community Plan and certified Local Coastal Program, including the voter-approved Beach Protection Initiative as certified by the Coastal Commission; and

WHEREAS, the City's adaptation strategy, as reflected in the Adaptation Plan, includes proactive implementation of programs, including sand replenishment and management, and utilization of additional programs to protect the low lying properties (public and private) behind the first row of houses on the beach from ocean and river flooding through maintenance of a public beach, dredging of the river channel as needed, and other strategies to reduce the risk to these low lying areas; and

WHEREAS, Del Mar's approach recognizes that the beach, river, and lagoon systems are public assets of importance beyond Del Mar and whereas the supporting technical documents prepared by ESA in 2018 (Sediment Management Plan and Lagoon Wetland Habitat Migration Assessment) will facilitate long term planning strategies to protect the community, reduce the risk of hazards, and plan ahead for protection of these coastal resources; and

WHEREAS, the City believes the adopted approach will be successful, is "feasible" within the meaning of the Coastal Act and City law, and will best meet both public and private goals for a significant period of time; and

WHEREAS, the City thoroughly evaluated planned retreat as a strategy for Del Mar in accordance with State guidance and concluded it is not necessary or feasible to achieve the Coastal Act and City goals and that it conflicts with the City's vision for the future, the voter-approved Community Plan, and the certified Local Coastal Program, which includes the voter-approved Beach Preservation Initiative; and

WHEREAS, the City further concluded that there is no clear net public benefit or current need, environmental or otherwise, for planned retreat because the City's adopted adaptation strategies are sufficient; that planned retreat is not feasible in Del Mar due to the economic, environmental, engineering, social, political, and legal constraints and uncertainties; that the extremely high land value in Del Mar means that public acquisition of any property the City does not control will be difficult and cost prohibitive for the City to pursue; that alternative locations are not available for displaced residents or City infrastructure to relocate; that the existing shoreline protection for the "front row" homes and City property along the beachfront help protect lower lying public and private property from ocean flooding; that removal of the existing shoreline protection structures and the

“front row” homes and City facilities would likely not alleviate the risk of flooding due to the lower elevation of the rest of the neighborhood; that there is a high threat of infrastructure failure if existing shoreline protection structures are removed; and that there is a high threat of legal risk if retreat of private property is pursued; and

WHEREAS, the City will reevaluate the associated necessity and feasibility of newly available adaptation options as appropriate using the best available data and State guidance when specific adaptation projects or amendments to the Adaptation Plan are considered at a future date; and

WHEREAS, the Local Coastal Program Amendments follow the State’s guidance (relating to sea level rise adaptation), but intentionally differ from the State’s guidance by rejecting managed retreat (planned retreat) and continuing to apply the City’s current definition of existing development and existing regulations for redevelopment of non-conforming properties in order to recognize local conditions and effectively implement the Community’s vision for the future, without conflict, pursuant to the City’s Community Plan, Adaptation Plan, and certified Local Coastal Program, including the Beach Preservation Initiative (BPI); and

WHEREAS, in the adopting the Local Coastal Program Amendments the City Council considered the comments of the California Coastal Commission, including but limited to the comments set forth in the September 28, 2018 correspondence; and

WHEREAS, the Local Coastal Program Amendments have been shaped by and are the result of a multi-year public process that included more than 20 public meetings, input from the Sea Level Rise Stakeholder Technical Advisory Committee (STAC) and recommendations from the Del Mar Planning Commission; and

WHEREAS, the Local Coastal Program Coastal Amendments and the certified Local Coastal Plan are intended, consistent with the provisions of the Coastal Act, to represent the standard of review for of all discretionary local Coastal Development Permits; and

WHEREAS, the City Council wants to establish for the record and reassure the community of its commitment to the Local Coastal Program Amendments and its intention to defend the Local Coastal Program Amendments, particularly the rejection of “Managed Retreat” as an adaptation strategy, against any proposed Coastal Commission modification that is substantially inconsistent with the adopted Adaptation Plan and the associated Local Coastal Program Amendments.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Del Mar as follows:

1. The foregoing recitals are true and correct.

2. That the City Council is hereby committed, to the extent permitted by law, to support and defend the adopted Adaptation Plan and Local Coastal Program Amendments by:
 - a. Vigorously advocating for and defending the Local Program Amendments before the California Coastal Commission.
 - b. Rejecting any suggested modifications by the California Coastal Commission that substantially deviate from or are inconsistent with the City's adopted Adaptation Plan and Local Coastal Program Amendments, that conflict with the City's rejection of managed retreat as a local adaptation strategy, and that substantially conflict with how the City currently regulates "existing development" to the extent that the prospective LCP could be misinterpreted and incorrectly applied as a means to prevent new development or redevelopment on properties in existing developed neighborhoods contrary to the Del Mar Community Plan or that conflict with the voter approved BPI and the City's integrated and unified systems approach to adaptation at a local neighborhood scale that protects property, infrastructure, coastal access, the public beach, and coastal resources.

3. That the City Council is hereby committed to continue providing an open process for public participation by:
 - a. Holding a public meeting of the City Council to provide an opportunity for the public to provide input on any Coastal Commission staff recommendation to conditionally approve or deny the City's Local Coastal Program Amendments and an opportunity for the City Council to provide direction to City staff prior to any such Coastal Commission hearing occurring.
 - b. Holding an additional public meeting of the City Council following action by the Coastal Commission to conditionally approve or deny the City's Local Coastal Program Amendment to provide an opportunity for the public to provide input and for the City Council to provide direction on next steps.

4. That the City Council is committed to concurrent processing of a Community Plan Amendment to incorporate the adopted Adaptation Plan by reference to insure that any proposed modification to the Adaptation Plan will require a 4/5th vote of the City Council or voter approval.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Del Mar, State of California, at a Regular Meeting held on the 15th day of October 2018.

Dwight Worden, Mayor
City of Del Mar

APPROVED AS TO FORM:

Leslie E. Devaney, City Attorney
City of Del Mar

ATTEST AND CERTIFICATION:
STATE OF CALIFORNIA
COUNTY OF SAN DIEGO
CITY OF DEL MAR

I, ASHLEY JONES, Administrative Services Director/City Clerk of the City of Del Mar, California, DO HEREBY CERTIFY, that the foregoing is a true and correct copy of Resolution No. 2018-XX, adopted by the City Council of the City of Del Mar, California, at a Regular Meeting held the 15th day of October, 2018, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Ashley Jones, Administrative Service
Director/City Clerk

RESOLUTION NO. 2018 - 68

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DEL MAR, CALIFORNIA, APPROVING THE AMENDMENTS TO THE EXISTING CERTIFIED DEL MAR LOCAL COASTAL PROGRAM LAND USE PLAN (LCPA 18-002) AND DIRECTING STAFF TO SUBMIT THE LOCAL COASTAL PROGRAM AMENDMENT TO THE COASTAL COMMISSION FOR CERTIFICATION.

WHEREAS, the Local Coastal Program Amendment is consistent with the City of Del Mar Coastal Hazards, Vulnerability, and Risk Assessment (Vulnerability Assessment) that was prepared for the City by Environmental Science Associates (ESA) with a supporting Addendum (2018) that explains the changes in the science since the initial assessment in 2016; and

WHEREAS, the Vulnerability Assessment identifies that future viability of the City of Del Mar is threatened by projected sea level rise, storm surge, coastal flooding, river flooding, or erosion and that long term planning is necessary to increase resiliency; and

WHEREAS, Del Mar is a coastal city with a certified Local Coastal Program (LCP) that is required pursuant to the California Coastal Act to contain hazard control policies and regulations to effectively address safe development, public access, habitat, wildlife, scenic views, priority land uses, wetlands, and agriculture; and

WHEREAS, on May 21, 2018, the City Council adopted a variety of local hazard mitigation strategies in the Del Mar Coastal Resiliency/Sea Level Rise Adaptation Plan ("Adaptation Plan"); and

WHEREAS, the City's existing certified Local Coastal Program (LCP) contains the City's existing shoreline hazard policies and regulations; and

WHEREAS, processing of a Local Coastal Program Amendment is necessary to add, modify, remove, and update the existing LCP to clarify the City's desired adaptation approach for long term resiliency and to remove any conflicts with the existing LCP; and

WHEREAS, on September 11, 2018, the Planning Commission recommended approval to the City Council of the Local Coastal Program Amendment (LCPA18-002); and

WHEREAS, the Local Coastal Program Amendment is subject to certification by the California Coastal Commission; and

WHEREAS, the City of Del Mar posted, mailed, and distributed a Notice of Availability for public review and provided all required notices of public hearing in accordance with California Code of Regulations Section 13515 requirements for public participation and agency coordination for Local Coastal Program Amendments; and

WHEREAS, the City of Del Mar provided additional mailed courtesy notice to all residents and owners within the areas identified as potentially vulnerable; and

WHEREAS, staff determined that the proposed Local Coastal Program Amendment is exempt from preparation of an environmental document pursuant to CEQA Guidelines Section 15061(b)(3) because this activity is covered by the general rule that CEQA only applies to projects which have the potential for causing a significant effect on the environment and based on the CEQA Guidelines Section 15265 Statutory Exemption (Adoption of Coastal Plans and Programs), which states that CEQA does not apply to activities and approvals pursuant to the California Coastal Act by any local government as necessary for the preparation and adoption of a Local Coastal Program because per the CEQA Guidelines the burden of CEQA compliance for this type of action shifts from the City to the Coastal Commission; and

WHEREAS, the City Council adopted a wide range of adaptation options and strategies to achieve compliance with the Coastal Act goals as set forth in Public Resources Code section 30001.5; and

WHEREAS, Del Mar's Adaptation Plan and local hazard mitigation strategy was designed to be in full compliance with Del Mar's Community Plan and certified Local Coastal Program, including the voter-approved Beach Protection Initiative as certified by the Coastal Commission; and

WHEREAS, the City's adaptation strategy includes proactive implementation of programs, including sand replenishment and management, and utilization of additional programs to protect the low lying properties (public and private) behind the first row of houses on the beach from ocean and river flooding through maintenance of a public beach, dredging of the river channel as needed, and other strategies to reduce the risk to these low lying areas; and

WHEREAS, Del Mar's approach recognizes that the beach, river, and lagoon systems are public assets of importance beyond Del Mar and whereas the supporting technical documents prepared by ESA in 2018 (Sediment Management Plan and Lagoon Wetland Habitat Migration Assessment) will facilitate long term planning strategies to protect the community, reduce the risk of hazards, and plan ahead for protection of these coastal resources; and

WHEREAS, the City believes the adopted approach will be successful, is "feasible" within the meaning of the Coastal Act and City law, and will best meet both public and private goals for a significant period of time; and

WHEREAS, the City thoroughly evaluated planned retreat as a strategy for Del Mar in accordance with State guidance and concluded it is not necessary or feasible to achieve the Coastal Act and City goals and that it conflicts with the City's vision for the future, the voter-approved Community Plan, and the certified Local Coastal Program, which includes the voter-approved Beach Preservation Initiative; and

WHEREAS, the City further concluded that there is no clear net public benefit or current need, environmental or otherwise, for planned retreat because the City's adopted

adaptation strategies are sufficient; that planned retreat is not feasible in Del Mar due to the economic, environmental, engineering, social, political, and legal constraints and uncertainties; that the extremely high land value in Del Mar means that public acquisition of any property the City does not control will be difficult and cost prohibitive for the City to pursue; that alternative locations are not available for displaced residents or City infrastructure to relocate; that the existing shoreline protection for the “front row” homes and City property along the beachfront help protect lower lying public and private property from ocean flooding; that removal of the existing shoreline protection structures and the “front row” homes and City facilities would likely not alleviate the risk of flooding due to the lower elevation of the rest of the neighborhood; that there is a high threat of infrastructure failure if existing shoreline protection structures are removed; and that there is a high threat of legal risk if retreat of private property is pursued; and

WHEREAS, the City will reevaluate the associated necessity and feasibility of newly available adaptation options as appropriate using the best available data and State guidance when specific adaptation projects or amendments to the Adaptation Plan are considered at a future date.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Del Mar that the proposed Amendment to the existing certified Local Coastal Program Land Use Plan (LCPA 18-002) is hereby adopted (Exhibit “A”).

BE IT FURTHER RESOLVED, that staff is hereby directed to submit the Local Coastal Program Amendment to the Coastal Commission for certification.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Del Mar, State of California, at a Regular Meeting held on the 1st day of October 2018.

Dwight Worden, Mayor
City of Del Mar

APPROVED AS TO FORM:

Leslie E. Devaney, City Attorney
City of Del Mar

ATTEST AND CERTIFICATION:

STATE OF CALIFORNIA
COUNTY OF SAN DIEGO
CITY OF DEL MAR

I, ASHLEY JONES, Administrative Services Director/City Clerk of the City of Del Mar, California, DO HEREBY CERTIFY, that the foregoing is a true and correct copy of Resolution No. 2018-68, adopted by the City Council of the City of Del Mar, California, at a Regular Meeting held the 1st day of October, 2018, by the following vote:

AYES: Mayor Worden, Council Member Haviland and Parks

NOES: Deputy Mayor Druker

ABSENT: Council Member Terry Sinnott

ABSTAIN: None

Ashley Jones, City Clerk/Administrative
Services Director

CHAPTER I - INTRODUCTION

This document comprises the "Land Use Plan" portion of the Local Coastal Program for the City of Del Mar. The Land Use Plan is a compilation of the goals, policies and recommendations identified in the Del Mar Community Plan, various policy reports, the San Dieguito Lagoon Enhancement Program, as well as other goals and policies adopted by the City Council to guide future development within Del Mar.

A. Purpose

The purpose of the goals, policies and recommended programs presented in this Land Use Plan is to ensure that all land use and development activities within the City of Del Mar will be in conformance with the policies of the California Coastal Act of 1976, as amended. This Land Use Plan will be implemented and enforced by the City of Del Mar through the procedures set forth within this document and the City of Del Mar Municipal Code.

This Land Use Plan was certified by the Coastal Commission on March 18, 1993. Following certification of the corresponding Implementing Ordinances, the City will assume authority for the processing of Coastal Development Permits for most projects within Del Mar. Even after certification, the Coastal Commission will retain authority for processing coastal development permits for projects in areas known as “original jurisdiction”. Original jurisdiction areas are generally those lands which are subject to tidal action or claims of public trust. The processing of such permits shall be consistent with the procedures set forth in the California Coastal Act.

B. History/Legal Authority

Paragraphs 1 through 5 [No change]

Chapter III identifies the hazardous natural conditions in Del Mar, including: coastal bluff failures, shoreline storm ~~water~~ damage, flooding (river and coastal), ~~and~~-runoff and slope erosion, and increased risks of flooding, beach loss, and coastal bluff erosion due to projected sea level rise. The Chapter also includes regulatory policies intended to minimize such hazards. The purpose of Chapter IV, the public access component of this Land Use Plan, is to ensure that the general public’s opportunity to get to and enjoy the City’s considerable coastal recreational resources is protected. Chapter V identifies recreation areas within and around the City and contains policies for improving recreational opportunities. Chapter VI is entitled Sensitive Lands and contains the policies intended to assure that the sensitive wetland and hillside habitat areas within the City are preserved and, where feasible, enhanced.

Figure I-A [No change]

CHAPTER II – LAND USE DEVELOPMENT

A. Background [No change]

B. Land Use Development Goals and Policies – General [No change]

C. Land Use Development Goals and Policies- By District [No change]

Figure II-A [No change]

Land Use Designations/Allowed Uses

Figure II-B [No change]

CHAPTER III – HAZARD CONTROL

A. Background

The hazardous natural conditions existing in Del Mar include: coastal bluff failure, shoreline storm damage, flooding (river and coastal), ~~and~~ runoff and slope erosion, and increased risks of flooding, beach loss, and coastal bluff erosion due to projected sea level rise. Each of these is discussed in detail below.

1. Coastal Bluff Failure

The Del Mar area is made up of a variety of geological formations. These are shown on the accompanying Figure III-A, an exhibit of Geologic Formations of the Del Mar region prepared for the California Division of Mines and Geology and the California Department of Conservation. These formations include: beach sand (designated as (Qb) on the accompanying Figure; undifferentiated alluvium (Qal, Qsw); Bay Point Formation (Qbp); Torrey Sandstone (tt); Delmar Formation (Td); and Linda Vista Formation, quaternary nearshore deposits (Qln). Some of the hazards associated with these formations include the erosion of cliffs along horizontal planes of weak strata and vertical fracture planes, slumping of terrace material due to excessive surface drainage or subsurface water seepage and damage due to wave action at the base of coastal bluffs.

Bare slopes that lack vegetative cover are particularly susceptible to rilling, slumping and other related erosion problems. Excessive runoff from atop coastal bluffs coupled with the continued use of rail tracks located along the bluff top has resulted in a number of slope failures and potential failure points. Coastal bluff erosion in Del Mar is a problem which threatens the useful life of the ~~AT&SF Railway right-of-way~~ Los Angeles-San Diego-San Luis Obispo (LOSSAN) railroad corridor and the properties to the east and west of the tracks. The erosion also creates hazards which interfere with safe, pedestrian access to and along the shoreline.

The City’s Coastal Hazards, Vulnerability, and Risk Assessment (Environmental Science Associates 2016) identified coastal bluff erosion as a local hazard and public safety concern in the near term for the LOSSAN railroad corridor that runs along the south beach and south bluff neighborhood districts and mid to long term vulnerability for the south bluff neighborhood district located eastward of the railroad corridor. Del Mar’s north bluff and the low-lying bluffs at Powerhouse Park are similarly vulnerable, but do not contain railroad infrastructure.

Historically, the San Diego Association of Governments (SANDAG) and North County Transit District (NCTD) have responded to retreat of Del Mar’s south bluff with multiple bluff stabilization projects. The City identified a range of adaptation measures in Del Mar’s Sea Level Rise Adaptation Plan (Environmental Science Associates 2018) to help property owners, including the City, to plan ahead and address projected coastal bluff erosion and reduce the level of risk to people, property, and coastal resources. The City’s preferred adaptation measure for the entire Del Mar shoreline is beach nourishment and retention of sand on the beach adjacent to the bluffs. Other adaptation measures for Del Mar’s coastal bluffs generally include best management practices and relocation of public infrastructure and the railroad. The City discloses identified coastal hazards and protects the public health, safety, and general welfare in these vulnerable areas through application of the Coastal Bluff Overlay Zone (Del Mar Municipal Code Chapter 30.55) and the Beach Protection Initiative implemented by the Beach Overlay Zone (Del Mar Municipal Code Chapter 30.50).

2. Shoreline Storm Damage

There are several major contributing factors to coastal bluff erosion in Del Mar. These include: a loss of beach sand due to the combined effect of littoral drift and the reduced sand replenishment supplies, the erosive effect of sea wave attack, underground water seepage, surface runoff flowing into unprotected areas from irrigation systems, ~~and~~ ~~overtaxed~~ drainage systems, ~~and~~ sea level rise. Other factors include uncontrolled pedestrian access down the face of coastal bluffs and the frequent vibration and soils stress associated with passing railcars in the ~~AT & SF right-of-way~~ Los Angeles-San Diego-San Luis Obispo (LOSSAN) railroad corridor.

The continuing loss of beach sand significantly increases the susceptibility of beachfront development to winter storms and high water hazards. A decrease in sediment supply will reduce the width of Del Mar’s beach, if sand replenishment programs are not implemented. Although protective devices may slow landward erosion, they can also cut off the landward sand supply.

A number of shoreline protective structures have been placed on Del Mar’s beach in an attempt to protect beachfront properties from the damaging impacts associated with critically high tides and storm waves. These measures have varied from [sand] berms and riprap to more substantial concrete and timber, seawalls and other protective devices. They include: hazards from improper design; the potential for loose materials to become projectiles during storm conditions; the acceleration of beach erosion; and the displacement of sandy beach area.

A long-range, comprehensive approach to balance the need for protecting private properties from erosion while maximizing public access opportunities along the shoreline has been developed in the form of the Del Mar Beach Preservation Initiative (BPI). This ordinance was adopted by the Del Mar citizens in an initiative election in April of 1988. The City Council incorporated the provisions of the voter approved BPI into the Del Mar Municipal Code as the Beach Overlay Zone (BOZ). Many of the policies of the BOZ are applicable to the access policies in Chapter IV of this Land Use Plan. However, they are also applicable to the issues of minimizing hazards and have, therefore, been included here. Implementation of these policies, in addition to region-wide cooperative efforts regarding shoreline projects, is essential to avoid the adverse impacts of improperly designed and inappropriately sited shoreline protective structures.

3. Flooding (River and Coastal)

Portions of the San Dieguito River Valley and Floodplain are located within the northern portion of the City. These areas are located along the coastline and extend several miles inland. The area is highly susceptible to damage by storm wave impacts and flooding, flooding from upland areas and, on rare occasions, to tsunamis.

Much of the San Dieguito River Valley is within the 100-year floodplain as designated on Federal Insurance Rate Program Maps prepared by the Federal Emergency Management Agency. The ~~river~~ floodway and floodplain extend over previously developed and undeveloped land. The City protects the public health, safety, and general welfare in these areas through application of the Floodway Zone regulations (Del Mar Municipal Code Chapter 30.29) and Floodplain Overlay Zone regulations (Del Mar Municipal Code Chapter 30.56). The Floodway Zone regulations ~~of this Land Use Plan~~ prohibit the placement of fill or the development of permanent structures within the Floodway Zone where the hazards of flooding are the greatest. ~~Other policies regulate that development which is allowed within the~~ The Floodplain Overlay Zone regulations apply to the 100-year floodplains, which are the City’s flood-prone areas that are subject to periodic inundation due to river or coastal flooding.

4. Runoff and Slope Erosion [No change]

5. Sea Level Rise

Sea level rise is the increase in the elevation of the ocean surface. The City’s Coastal Hazards, Vulnerability, and Risk Assessment (Environmental Science Associates 2016) identified that the City is vulnerable to sea level rise and the associated increased risk of flooding (river and coastal), storm surge, beach erosion, and coastal bluff erosion. With projected future climate change and sea level rise, Del Mar’s vulnerabilities are projected to increase in both frequency and intensity, resulting in increased damage to much of Del Mar’s shoreline, San Dieguito Lagoon, Los Penasquitos Lagoon, and the adjacent low-lying areas and coastal bluffs. Sea level rise is projected to impact the City’s coastal resources and valued assets including public and private properties;

the public beach and beach access; lagoon habitat; and government infrastructure including the City’s emergency services, roads, bridges, and other infrastructure.

Local sea level rise projections and effects are based on the 2012 National Research Council study “Sea Level Rise for the Coasts of California, Oregon, and Washington”, which, subject to updates as appropriate, is considered the best available science for the State of California. However, the processes causing sea level rise and the science projecting sea level rise are inherently uncertain because the rate of sea level rise is highly dependent on whether global greenhouse gas emissions will be reduced. This means that the actual rate of sea level rise could be higher or lower than currently projected. The City has therefore adopted a flexible approach to monitor the change in conditions over time and to respond as appropriate when there is a significant and measurable change in conditions.

The City will continue to monitor the change in local shoreline conditions and utilize best available science to plan for and minimize coastal hazards, maximize protection of coastal resources, coordinate with regional, state, and federal agencies, and maximize public participation. Where significant changes in hazardous conditions are identified, adaptation measures will be considered to reduce the level of risk to people, property, and coastal resources consistent with Del Mar’s Sea Level Rise Adaptation Plan (Environmental Science Associates 2018).

B. Shoreline Hazards – Goals and Policies

Goal III-A:

Establish a comprehensive program to protect shoreline areas susceptible to storm/flooding hazards by anticipating coastal hazards, monitoring and evaluating shoreline areas for significant trends and changes in conditions (i.e. repetitive flood losses, reduced sandy beach width, and bluff retreat), and taking appropriate action to reduce the risk and potential adverse effects.

Policies:

III-1 [No change]

III-2 Conserve the natural character of land, water, vegetative and wildlife resources within the community by ensuring that future development minimizes the disturbance of existing or natural terrain and vegetation, and does not create soil erosion, silting of lower slopes, slide damage, flooding problems and/or cutting or scarring, through application of the following policies:

- a. Regulate development in accordance with the specific Beach Overlay Zone (BOZ), Floodway Zone (FW) and Floodplain Overlay Zone (FP) ~~Overlay Zone~~ regulations contained within ~~this chapter~~ Del Mar Municipal Code Chapters 30.50, 30.29, and 30.56 respectively.

- b. Review all proposed drainage and irrigation systems for their ability to control runoff and seepage into downstream areas and to ensure that no significant erosion or the associated siltation of downstream resources will occur.

For purposes of this Land Use Plan, "significant erosion" shall mean the likelihood of removal of soil or the cutting, scarring, or filling of slopes, canyons, or bluff faces, or the silting of lower slopes brought about by runoff from surfaces during irrigation or from rainfall of an intensity and duration less than or equal to that of the 100-year period design storm.

- c. Regulate development in proximity to coastal bluffs in accordance with the Coastal Bluff Overlay Zone Regulations contained within ~~this chapter~~ Del Mar Municipal Code Chapter 30.55.
- d. In addition to the requirements of the Coastal Bluff regulations of this chapter, require the use of drought-tolerant plants in new and redevelopment projects throughout the City in order to minimize potential erosion impacts from irrigation, systems and to reduce water consumption.
- e. Implement best management practices to minimize shoreline hazards.
- f. Support relocation of the railroad and other public infrastructure from vulnerable bluff areas.

III-3 Control the development of properties within the Bluff, Slope and Canyon (BSC) Overlay Zone to protect the health, safety and general welfare and to preserve scenic sandstone bluffs, related canyons, steep slopes and their downstream resources in accordance with the Del Mar Community Plan and Del Mar Municipal Code Chapter 30.52. ~~The regulations of the BSC Overlay Zone are cited in Chapter VI of this Land Use Plan entitled, Sensitive Lands.~~

III-4 [No change]

Beach Hazards/Public Access Policies

III-5 Continue to study and implement shoreline management and replenishment programs applicable to the Oceanside littoral cell through participation in the activities of the regional organizations and agencies including, but not limited to, the San Diego Association of Governments (SANDAG) and the Beach Erosion Action Committee (BEACH) San Diego Regional Climate Collaborative in order to replenish beach sand on a regular basis.

III-6 Minimize the loss of life and destruction of property from seismic, geologic, oceanographic and weather related causes by developing a ~~well-coordinated~~ well-coordinated disaster plan which

includes preparation for earthquakes, tsunamis, and storm waves. Require new development to incorporate design measures that will reduce and where feasible eliminate the risk of extreme flooding damage to people and property, public and private.

III-7 Promote public safety, health and welfare, and provide for the protection of private property while protecting public access opportunities to and along the beach through enforcement of the provisions of the Beach Preservation Initiative as incorporated into the ~~following~~ Beach Overlay Zone Regulations in Del Mar Municipal Code Chapter 30.50. These regulations reflect a balance of the need to minimize risks and protect property and the desire to maximize public access opportunities. The following regulations of the Beach Overlay Zone are cited in their entirety here, in this Hazards section. However, because of many of the regulations do reflect maximization of public access opportunities, they are also referenced in Chapter IV entitled “Coastal Access”.

[Beach Overlay Zone regulations are inserted here in existing LUP—No change]

III-8 Where seawalls or other shoreline protective devices are required for the protection of existing principal structures it shall be the City’s policy to encourage their construction landward of the Shoreline Protection Area (SPA) line on private property. Proposals for the construction of shoreline protective devices shall be reviewed and processed in accordance with the ~~following~~ Setback Seawall Permits Regulations in Del Mar Municipal Code Chapter 30.51. ~~These Setback Seawall Permit Regulations are established to~~ which regulate beach uses east of the Shoreline Protection Area line. It is the intent to encourage seawalls or other type of protective devices when needed, to be constructed landward (east) of the Shoreline Protection Area (SPA) line.

[Remove: Setback Seawall Permit Regulations as inserted here in existing LUP. Replace with code reference as incorporated above.]

Section C. Coastal Bluffs and Vulnerable Slopes

Goal ~~III-B~~:

~~Preserve Del Mar’s fragile coastal bluffs as a visual resource and avoid the risks to life and property associated with bluff failure and shoreline erosion.~~

Policies:

III-9 Where a proposed development would lie at the top of, or in proximity to a coastal bluff, the Coastal Bluff Overlay Zone Regulations (Del Mar Municipal Code Chapter 30.55) ~~cited below and on subsequent pages shall~~ apply. For purposes of this Land Use Plan, a coastal bluff is defined as a steep escarpment with a slope gradient equal to or greater than an average of one foot vertical to one foot horizontal and a vertical rise of 15 feet or more, and which is located in an area that is periodically subject to ocean wave action. Based on best available science, the existing lower

coastal bluffs and adjacent slopes are projected to significantly erode landward. The areas of the City of Del Mar in which coastal bluffs are located are shown on Figure III-C. As shown on this Figure, the manufactured cut slope which follows the eastern edge of the ~~AT&SF Railway Right of Way~~ Los Angeles-San Diego-San Luis Obispo (LOSSAN) railroad corridor between the City’s southern boundary and 15th Street is not considered to be a coastal bluff. ~~Therefore, the~~ However, the properties which lie to the east of such manufactured cut slope (south bluff neighborhood) are not subject to the following coastal bluff regulations are identified as vulnerable to sea level rise and coastal bluff erosion per the City’s Coastal Hazards, Vulnerability, and Risk Assessment (Environmental Science Associates 2018). The City will continue to monitor changes in the rate of erosion of the lower coastal bluffs and any changes in projected erosion rates.

Future consideration of whether to amend the boundary of the Coastal Bluff Overlay Zone subareas will occur within 5 years and will take into account the effects of approved adaptation projects. This implementation program allows the City to have a flexible plan in place that can adjust as needed based on changes in local conditions and changes in projections based on best available science. On properties within the Coastal Bluff Overlay Zone that are vulnerable to projected hazards within a near to mid-term planning horizon, new development applications must consider the relationship between the economic life of proposed structure(s) and projected hazards.

[Remove: the coastal bluff overlay zone regulations inserted here in existing LUP. Incorporated by reference above.]

Goal III-B:

Preserve Del Mar’s ~~fragile~~ coastal bluffs as a visual resource and avoid the risks to life and property associated with bluff failure and shoreline erosion by anticipating erosion hazards, monitoring and evaluating shoreline areas for significant trends and changes in conditions (i.e. reduced sandy beach width and bluff retreat), and taking appropriate action to reduce the risk and potential adverse effects.

Policies:

III-9 Require all new development located on a coastal bluff or vulnerable slope to be setback from the coastal bluff edge a sufficient distance to ensure stability, ensure that it will not be endangered by erosion, and to avoid the need for protective devices during the economic life of the structure (minimum 75 years). Such setbacks must take into consideration projected long-term bluff retreat over the next 75 years, as well as slope stability. To assure stability, the development should maintain a minimum factor of safety of 1.5 against land sliding for the economic life of the structure. Alternative stability requirements may be approved to the satisfaction of the City Engineer and Building Official if an equivalent factor of safety is demonstrated.

III-10 Ensure development is sited and designed to avoid and mitigate impacts from sea level rise hazards associated with bluff erosion.

D. Runoff and Erosion Control

Goal III-C:

Protect resources and property located downstream from hillside and bluff areas from damage due to uncontrolled runoff by anticipating erosion hazards, monitoring and evaluating shoreline areas for significant trends and changes in conditions (i.e. reduced sandy beach width and bluff retreat), and taking appropriate action to reduce the risk and potential adverse effects.

Policies:

~~III-10~~ III-11 Minimize damage from runoff from all projects within the City by:

Subsections a through d and final paragraph [No change]

E. Flood Hazards

Goal III-D:

Minimize risks to life and property associated with flooding and flood waters by anticipating flood hazards, monitoring and evaluating shoreline areas for significant trends and changes in conditions (i.e. repetitive flood losses, reduced sandy beach width, and bluff retreat), and taking appropriate action to reduce the risk and potential adverse effects.

Policies:

Flood hazards shall be minimized through the application of the ~~following Flood Hazard Regulations:~~ Floodway Zone (Del Mar Municipal Code Chapter 30.29) and the Floodplain Overlay Zone (Del Mar Municipal Code Chapter 30.56), which rely on ~~Where these regulations make reference to the most recently approved Federal Insurance Rate Map (FIRM) or a designation taken from such a map, the most recent, approved FIRM shall be used.~~

Flood Hazard Regulations

~~III-11~~ III-12 Enhance public safety within the San Dieguito River Floodway by:

- a. Prohibiting the construction of permanent structures or the placement of fill on either a temporary or permanent basis within designated floodway (FW) areas.
- b. Prohibiting uses in the floodway which would constitute an unreasonable, unnecessary, undesirable, or dangerous impediment to the flow of floodwaters,

or which would cause a cumulative increase in the water surface elevation of the base flood of more than one foot at any point.

- c. Requiring proposed development to be located, where feasible, so as to eliminate the need for protective devices such as seawalls, riprap, retaining walls, or other flood control devices.
- d. Protecting public infrastructure and property from sea level rise and flooding risks.
- e. Flood-proofing or relocating vulnerable public facilities, infrastructure, and utilities.
- f. Dredging and maintaining the San Dieguito River channel to reduce river flood risks.
- g. Utilizing living levees to reduce flood risk to adjacent low lying areas.

~~III-12~~ **III-13** Ensure that ~~the development of real property which is subject to floodwaters~~ within the Floodplain Overlay Zone will not unreasonably obstruct flood ~~flow~~ waters; will not create a hazard to life, health, safety, or the general welfare; will reduce the need for the construction of flood control facilities that would be required if unregulated development occurs; and will minimize the cost of flood insurance to Del Mar residents. The following Floodplain (FP) Overlay Zone policies shall be applied to all applications for a Floodplain Development Permit. A Floodplain Development Permit shall be required for any new construction or substantial improvement to existing structures within the FP Overlay Zone ~~designated on Figure III-F~~. This overlay zone incorporates floodplain areas designated on the Federal Insurance Rate Map (FIRM) for the area as prepared by the Federal Emergency Management Agency ~~and updated in 1986~~. ~~That~~ The floodplain areas are generally depicted on the map that is included as Figure III-E.

Applications for Floodplain Development Permits shall be reviewed for consistency with the following requirements to be assured that new development will:

- a. Be anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
- b. Be constructed with materials and utility equipment resistant to flood damage;

- c. Use methods and practices that minimize flood damage;
- d. Have the lowest floor (including basement) of any residential structure elevated to or above the base flood elevation;
- e. Have the lowest floor (including basement) of any nonresidential structure elevated to or above the base flood level or, together with attendant utility and sanitary facilities, be flood-proofed below the base flood level to the extent that the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy, as certified by a registered professional engineer or architect;
- f. When located in an area of shallow flooding (Zones AO and VO on the community's FIRM), have the lowest floor (including basement) elevated to or above the depth number indicated on the most current FIRM; or if there is no depth number on the most current FIRM, be elevated at least two feet above the highest adjacent grade. As an alternative, nonresidential structures, together with attendant utility and sanitary facilities, may be flood-proofed to that level as specified in subsection "e" above;
- g. When located in Zones AO and AH on the FIRM, have adequate drainage paths around structures situated on sloping ground, to guide floodwaters around and away from said structures;
- h. Where a non-residential structure is to be flood-proofed, have the design and methods of construction in accordance with accepted standards of practice for flood-proofing or include the specific elevation in relation to mean sea level to which such structures are flood-proofed;
- i. Have all new and replacement water supply and sanitary sewage systems designed to minimize or eliminate infiltration of flood waters into the system and discharges from the system into flood waters;
- j. Have on-site waste disposal systems located to avoid impairment to them, or contamination from them, during flooding;
- k. Have all electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding;

- l. Have all fully enclosed areas below the lowest floor that are subject to flooding designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters with designs certified by a registered professional engineer or architect; or have at least two openings no more than one foot above grade with a total net area of at least one square inch per square foot of flooded area.
- m. Not require the construction of flood protective works, including, but not limited to, artificial flood channels, revetments or levees.

~~III-13~~ **III-14** The preceding floodplain development standards shall not apply to the undeveloped property known as the "railroad triangle" (APNs 299-071-02, 301-010-11; 301-032-5, 10, 11, 12; as shown on Figure III-G) and the floodplain portions of the southern properties in the Lagoon Overlay Zone. Said floodplain properties or areas may only be developed as follows:

- a. The development is capable of withstanding periodic flooding, and does not require the construction of flood protective works, including but not limited to, filling, artificial flood channels, revetments or levees.
- b. Existing environmentally sensitive habitat areas will not be disturbed, except for the purpose of restoration.
- c. Increased flood flow velocities will not occur.
- d. There will be no adverse water quality impacts to adjacent or downstream wetland areas.

III-15 Develop a fee recovery program to mitigate development impacts on coastal resources and fund adaptation projects that are consistent with the City’s Adaptation Plan.

CHAPTER IV – COASTAL ACCESS [NO CHANGE]

CHAPTER V – RECREATIONAL OPPORTUNITIES [NO CHANGE]

CHAPTER VI – SENSITIVE LANDS [NO CHANGE]

ORDINANCE NO. __

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DEL MAR, CALIFORNIA, AMENDING DEL MAR MUNICIPAL CODE CHAPTER 30.29 RELATED TO THE FLOODWAY ZONE, CHAPTER 30.55 RELATED TO THE COASTAL BLUFF OVERLAY ZONE, AND CHAPTER 30.56 RELATED TO THE FLOODPLAIN OVERLAY ZONE ALL RELATING TO DEL MAR'S SEA LEVEL RISE/COASTAL RESILIENCY PLANNING.

WHEREAS, the City's Coastal Resiliency/Adaptation Plan Work Program is a City Council Priority; and

WHEREAS, the City Council selected Environmental Science Associates (ESA) in 2015 as a technical consultant to prepare major grant tasks on the City's work program related to coastal resiliency and adaptation planning; and

WHEREAS, ESA prepared a Coastal Hazards, Vulnerability, and Risk Assessment for the City of Del Mar in 2016 using best available science that identified vulnerable areas in Del Mar that are subject to projected sea level rise, storm surge, coastal flooding, river flooding, or erosion; and

WHEREAS, on May 21, 2018, the City Council approved the Del Mar Adaptation Plan (Adaptation Plan) with a range of adaptation strategies based on sound scientific and engineering principles to address local hazards, help the City manage its shoreline and coastal resources for future generations, and reduce risk for property owners; and

WHEREAS, planned retreat (planned relocation of existing development out of hazard areas) was thoroughly evaluated as an adaptation strategy in accordance with the State's guidance and is not part of Del Mar's strategy pursuant to the City's conclusion that managed retreat (planned retreat) is not necessary and is not feasible within the meaning of the Coastal Act or City law as further demonstrated in the City's approved Adaptation Plan; and

WHEREAS, the proposed Local Coastal Program land use plan amendments and zone code amendments are consistent with the City's Community Plan, Adaptation Plan, and certified Local Coastal Program, including the Beach Preservation Initiative; and

WHEREAS, the Coastal Bluff Overlay Zone boundary is being amended to incorporate property on the upper manufactured slope (located landward of the existing coastal bluffs and railroad corridor) that is vulnerable to erosion hazards from projected sea level rise as shown on the corresponding draft zoning map on file with the City consistent with historical data and scientific studies of natural erosion hazards in Del Mar conducted by the United States Geological Survey (USGS) and ESA; and

WHEREAS, the Floodplain Overlay Zone boundary is being amended to incorporate beach front property from 18th Street north to the San Dieguito Lagoon river mouth that is subject to wave action and flooding hazards from projected sea level rise as shown on the corresponding draft zoning map on file with the City consistent with historical data and scientific studies of natural flood hazards conducted by USGS, Federal Emergency Management Agency (FEMA), and ESA; and

WHEREAS, the appeal period for FEMA's updated federal insurance rate map expired on January 29, 2018 because no technical basis for appeal was identified and no appeal was filed (by the City or any member of the public), following a multi-year process of public notice and public discussion of local flood hazards as follows: Del Mar community forum on January 14, 2016, Del Mar community workshop on February 25, 2016, ESA and staff presentation of local vulnerabilities and overview of FEMA's coastal mapping project in public meetings of the Sea Level Rise Technical Advisory Committee (STAC) on April 16 and May 5, 2016, ESA presentation to STAC on June 22, 2017 demonstrating consistency between USGS's CoSMoS mapping and FEMA's floodplain mapping for Del Mar, City staff presentation to STAC regarding the FEMA map update process on August 24, 2017, notice of FEMA's pending appeal period posted on the City webpage and mailed to affected property owners in September 2017, public notice of FEMA's 90 day appeal period published in the San Diego Union Tribune, Coast News and Del Mar Times on October 25, 2017 and again on November 1, 2017, and staff announcements at public meetings of the STAC, Design Review Board, Planning Commission, and City Council (during the appeal period) sharing information on how to submit a timely appeal; and

WHEREAS, the proposed zone code amendments to the Floodway Zone and Floodplain Overlay Zone are needed to satisfy federal requirements relating to floodplain management of special flood hazard areas for the City's continued participation in the national flood insurance program and for continued access to FEMA funding for hazard mitigation projects and disaster relief assistance; and

WHEREAS, staff determined that this action is exempt from preparation of an environmental document pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15061(b)(3) because this activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment and because the amendments disclose potential hazards, do not involve any type of expansion of use or development potential, and would not have a significant effect on the environment; and

WHEREAS, the proposed Zone Code Amendment/Local Coastal Program Amendment is subject to approval by the City Council and certification by the California Coastal Commission; and

WHEREAS, the standard of review for Coastal Commission action on the land use plan amendment is Coastal Act Chapter 3 (Coastal Resources Planning and Management Policies) and the standard of review for the zone code amendments is the land use plan most recently certified by the Coastal Commission; and

WHEREAS, the proposed amendments follow the State's generic guidance (relating to sea level rise adaptation), but intentionally differ from the State's guidance by rejecting managed retreat (planned retreat) and continuing to apply the City's current definition of existing development and existing regulations for redevelopment of non-conforming properties in order to recognize local conditions and effectively implement the Community's vision for the future at a local neighborhood-scale, without conflict, pursuant to the City's Community Plan, Adaptation Plan, and certified Local Coastal Program, including the Beach Preservation Initiative; and

WHEREAS, the North Beach neighborhood is an existing century-old developed area that is designated for development in the Del Mar Community Plan; and

WHEREAS, the North Beach neighborhood is currently protected by a system of seawalls, revetments, and beach street ends that provide for public beach access and protect adjacent private and public development from flooding in accordance with the City's Beach Preservation Initiative and certified Local Coastal Program; and

WHEREAS, if any segments of this existing integrated and unified system of beach shoreline access and protection were required to be removed, it would unnecessarily threaten the future viability of the neighborhood in conflict with the Del Mar Community Plan, Adaptation Plan, and Local Coastal Program; and

WHEREAS, it is the intent of the City Council to continue to allow new development and redevelopment of properties located within the North Beach neighborhood pursuant to Coastal Act Section 30250 and the existing Local Coastal Program regardless of whether or not the property is located in the floodplain as mapped by the Federal Emergency Management Agency (FEMA); and

WHEREAS, it is not the intent of the City Council to authorize any new development that is contrary to Coastal Act Section 30253; and

WHEREAS, the City's existing certified LCP provides a discretionary permit process to effectively evaluate and consider the merit of any future requests for shoreline protection consistent with the Coastal Act; and

WHEREAS, the City's proposed implementation approach has been shaped by the best available science and public input collected through a multi-year public process related to the topic of coastal resiliency/sea level rise planning in Del Mar that involved more than 20 public meetings and input from STAC to develop locally driven adaptation policies and implementing regulations; and

WHEREAS, a notice of availability of a local coastal program amendment/notice of public hearing was posted, published, and distributed per the Coastal Act requirements on July 26, 2018 and additional courtesy notice was mailed to local residents and property owners in potentially vulnerable areas and distributed via email to the City's electronic "notify me" list; and

WHEREAS, additional courtesy notice was distributed via email to STAC, Planning Commission, City Council, and the City's electronic "notify me" list and an additional notice of public hearing was posted, published, and distributed to the coastal always and interested persons lists per the Coastal Act on August 27, 2018 for the continued Planning Commission hearing held on September 11, 2018; and

WHEREAS, on September 11, 2018, the Planning Commission held a noticed public hearing and unanimously recommended that the City Council approve ZA 16-008/LCPA 18-002 with two additional considerations including 1) to ask the City Council to consider applicability of the Transitional Subarea and whether it is needed now and 2) to replace the references to deed restrictions with another legal mechanism that provides recorded notice (subsequently incorporated into DMMC Section 30.55.050(E)(3), DMMC Section 30.55.060(B)(2), and DMMC Section 30.56.050(E)(2)); and

WHEREAS, a notice of public hearing was posted (September 13, 2018), published in the San Diego Union Tribune (September 17, 2018), and mailed to the coastal always and interested persons lists per the Coastal Act (September 14, 2018) for the City Council hearing held on October 1, 2018; and

WHEREAS, on October 1, 2018, the City Council voted to continue the public hearing for introduction of the Ordinance to the next meeting of the City Council on October 15, 2018, and provided direction to proceed with the code amendments with no associated rezone or expansion of the existing boundaries for the overlay zones.

NOW THEREFORE, the City Council of the City of Del Mar hereby ordains as follows:

SECTION ONE

That Section 30.29.010 of the Municipal Code be revised to read as follows:

30.29.010 Zone Boundaries

Real property subject to the provisions of this Chapter shall be designated by ordinance on the City zone map as being within the Floodway Zone ("FW"). The zone boundaries identified shall not imply that land outside of the Floodway Zone will be free from flooding or flood damage.

SECTION TWO

That the title of Section 30.29.020 of the Municipal Code be revised to read as follows:

30.29.020 Purpose

[No change in text]

SECTION THREE

That a new Section 30.29.025 be added to the Municipal Code as follows:

30.29.025 Definitions

The definitions in section 30.56.030 shall apply to Chapter 30.29.

SECTION FOUR

That Section 30.29.030 of the Municipal Code be revised to read as follows:

30.29.030 Allowed Uses

Except as provided per Section 30.29.060, the following uses are allowed in the FW Zone provided the required permits have first been obtained in accordance with Section 30.29.050.

SECTION FIVE

That the title of Section 30.29.040 of the Municipal Code be revised to read as follows:

30.29.040 Specified Disallowed Uses

[No change in text]

SECTION SIX

That a new Section 30.29.050 be added to the Municipal Code as follows:

30.29.050 Required Permits for Development in the Floodway Zone

- A. Development in the Floodway Zone requires approval of the following permits:
 - 1. Floodplain Development Permit pursuant to Section 30.56.050
 - 2. Conditional Use Permit pursuant to Chapter 30.74
 - 3. Coastal Development Permit pursuant to Chapter 30.75
- B. Where base flood elevation data has not been provided by the Flood Insurance Study, the Floodplain Administrator shall obtain, review, and utilize base flood elevation and floodway data available from federal or state sources or require submittal of such data from the applicant. The Floodplain Administrator shall make interpretations, where needed as to the location of the boundaries of the areas of the Special Flood Hazard Area based on the best available engineering or scientific information.
- C. As a condition of approval, the applicant shall grant a flowage easement to the City for the portion of the property within the Floodway and appropriate agreements shall be secured between the applicant and City to assure participation by the applicant or any successor in interest in financing of future flood control works.

SECTION SEVEN

That a new Section 30.29.060 be added to the Municipal Code as follows:

30.29.060 Development Regulations for the Floodway Zone

- A. Within the Floodway Zone:
 - 1. No structure or portion thereof shall be erected, constructed, converted, established, altered or enlarged, and no landform alteration grading, placement or removal of vegetation shall be permitted, except where a permit is obtained authorizing:
 - a. An open fence to limit access in order to protect the public health and safety or to protect sensitive environmental resources; or
 - b. As related to an allowed use identified in Section 30.29.030.
 - 2. Structures shall not be attached to a foundation; and shall be removed upon imminence of flooding, as predicted by the National Weather Service or local weather broadcast. If a structure is not removed and flooding occurs, the retrieval or salvage of the structure

and repair of any damage caused by the structure shall be the responsibility of the owner.

3. Parking lots, new roadways, and roadway expansions shall be allowed only where consistent with the adopted Local Coastal Program Land Use Plan.
 4. Floodway encroachments for essential public utility and transportation crossings shall be allowed in accordance with DMMC Chapter 30.29 and the FEMA standards.
 5. Development, including new construction, significant modifications, or fill, is prohibited in the Floodway unless certification by a registered professional engineer is provided demonstrating that the development will not likely result in any increase in flood levels during the occurrence of the base flood discharge except as allowed under Code of Federal Regulations Title 44, Chapter 1, Part 60.3(c)(13).
- B. Development in the Floodway Zone shall be offset by improvements or modifications to enable passage of a base flood in accordance with FEMA standards.
- C. Development in the Floodway Zone shall not significantly adversely affect existing Environmentally Sensitive Habitat Areas on-site or off-site.
- D. Channelization or other substantial alteration of rivers or streams shall be limited to that necessary for the following:
1. Essential public service projects where no other feasible construction method or alternative project location exists;
 2. Flood control projects where no other feasible method for protecting existing public or private development exists and where such protection is necessary for public safety; and
 3. Projects where the primary function is the improvement of fish and wildlife habitat.
- E. Development that involves channelization or substantial alteration of rivers or streams is subject to the following requirements:
1. All requirements and relevant recommendations of hydrological studies for the watershed of the affected stream, as approved by the City Engineer, shall be incorporated into the project design and mitigation measures. These requirements include erosional

characteristics, flow velocities, volume, sediment transport, and maintenance of hydrology.

2. The channel shall be designed to ensure that the following occur:
 - a. Stream scour is minimized;
 - b. Erosion protection is provided;
 - c. Water flow velocities are maintained as specified by the City Engineer;
 - d. There are neither significant increases nor contributions to downstream bank erosion and sedimentation of sensitive biological resources; acceptable techniques to control stream sediment include planting riparian vegetation in and near the stream and detention or retention basins;
 - e. Wildlife habitat and corridors are maintained;
 - f. Resource management criteria are implemented consistent with applicable land use plans; and
 - g. Groundwater recharge capability is maintained or improved.
3. Channels that accommodate a base flood shall do so without increasing the water surface elevation more than one foot at any point from the level of a non-confined base flood in the natural undeveloped floodplain. Channels may accommodate less than a base flood (low-flow channels), but shall be designed and constructed in accordance with FEMA regulations.
4. All artificial channels shall consist of natural bottoms and sides and shall be designed and sized to accommodate existing and proposed riparian vegetation and other natural or proposed constraints. Where maintenance is proposed or required to keep vegetation at existing levels compatible with the design capacity of the channel, a responsible party shall be identified and maintenance and monitoring process shall be established to the satisfaction of the City Engineer.
5. In any case where a watercourse is to be altered, the flood carrying capacity of the altered or relocated portion of the watercourse shall be maintained and records of the permit decision shall be maintained and made available for public inspection regarding the associated certifications, appeals, or variances granted as applicable.

- F. Relief from the requirements in Section 30.29.060 may be requested with an application for a Floodplain Development Permit in accordance with Section 30.56.080 without need for a Variance application.

SECTION EIGHT

That a new Section 30.29.070 be added to the Municipal Code as follows:

30.29.070 Notification Required

In any case where a watercourse is to be altered, notification shall be provided to adjacent communities, the California Coastal Commission, the California Department of Water Resources, and the FEMA Federal Insurance Administration indicating that the permit records are available for public inspection.

SECTION NINE

That Section 30.55.010 of the Municipal Code be revised as follows:

30.55.010 Purpose

- A. The purpose of the Coastal Bluff Overlay Zone is to protect Del Mar's coastal bluffs as a visual resource and avoid the risks to life and property associated with bluff failure and shoreline erosion while employing regulations consistent with the rights of private property owners.
- B. The intent is to prohibit incompatible development in hazardous areas; ensure that new development is appropriately sited to minimize damage and avoid hazards; and reduce the need for shoreline protective devices.

SECTION TEN

That Section 30.55.020 of the Municipal Code be revised as follows:

30.55.020 Zone Boundaries and Real Estate Disclosure

- A. Property within the Coastal Bluff Overlay Zone shall include those areas designated by Ordinance and depicted upon the City Zone Zoning Map.
- B. All real estate transactions within the boundary of this Overlay Zone shall disclose that the property is located in the Coastal Bluff Overlay Zone.

SECTION ELEVEN

That Section 30.55.030 of the Municipal Code be revised as follows:

30.55.030 Definitions

For purposes of this Chapter, the following definitions shall apply:

Coastal Bluff shall mean a steep escarpment with a slope gradient equal to or greater than an average of one foot vertical to one foot horizontal and a vertical rise of 15 feet or more, and which is located in an area that is periodically subject to ocean wave action.

Coastal Bluff Edge shall mean the top edge of a coastal bluff as delineated using the following criteria:

1. In cases where the coastal bluff involves a series of stepped vertical and horizontal planes, the bluff top shall be considered to start at the seaward edge of the topmost riser of the vertical plane of the coastal bluff.
2. In cases where the coastal bluff edge is composed of a continuous, rather than stepped, downward slope, the bluff top shall be considered to start at that point nearest the bluff, seaward of which the downward gradient of the land surface increases more or less continuously at an angle which is more vertical than horizontal until it reaches the general gradient of the bluff.

Existing development shall mean any structure or development that was lawfully established, altered, and maintained pursuant to the Del Mar Municipal Code (or preceding San Diego County ordinances).

Sea level rise shall mean the increase in the elevation of the ocean surface.

Shoreline protective device shall mean constructed features such as seawalls, revetments, riprap, earthen berms, cave fills, and bulkheads that are primarily used to protect structures or other features from erosion and other shoreline changes due to wave action.

Vulnerable slope shall mean a bluff that is vulnerable to projected sea level rise and erosion impacts, but does not currently meet the definition of a "Coastal Bluff".

SECTION TWELVE

That Section 30.55.040 of the Municipal Code be revised as follows:

30.55.040 Allowable Uses

Unless otherwise specified herein, allowable uses in the Coastal Bluff Overlay Zone shall be limited to those uses and accessory uses allowed by the underlying zone and applicable overlay zones.

SECTION THIRTEEN

That Section 30.55.050 of the Municipal Code be repealed and replaced as follows:

30.55.050 Development Regulations for the Coastal Bluff Overlay Zone

- A. Proposed development shall be sited and designed to avoid impacts from erosion hazards over the economic life of the development (minimum 75 years) in accordance with the following:
1. A minimum 40-foot setback shall be provided between proposed development (including supporting structures and foundations) and a coastal bluff edge, except where otherwise provided below:
 - a. The setback from the coastal bluff edge shall have priority over required yard setbacks from the property line. If necessary to comply with setbacks from the coastal bluff edge and provide for reasonable use to avoid a taking, the decision maker may approve reduced yard setbacks up to a minimum of 5 feet from the property line without need for a Variance application provided the development is consistent with all other applicable requirements of the certified Local Coastal Program.
 - b. No grading shall be allowed within 40 feet of the coastal bluff edge, except as necessary to control surface runoff in accordance with Section 30.55.050(C). Grading or construction activities (on the face of a coastal bluff) shall only be permitted if approved as part of a Shoreline Protection Permit or Setback Seawall Permit pursuant to Chapters 30.50 and 30.51 respectively, and if the authorized review body makes a finding that the proposed grading is the minimum required to implement the authorized shoreline protection.

- c. At-grade accessory structures that do not require foundations (such as fences, windscreens, and benches) may be set back a minimum of ten feet from a coastal bluff edge if constructed using lightweight materials and without the use of grading and/or continuous foundation components.
 2. Native plants and other drought-tolerant plant species shall be utilized to minimize irrigation and reduce the potential for over watering of the bluffs. No new irrigation systems shall be installed within 40 feet of the coastal bluff edge. Any existing irrigation systems located within 40 feet of the coastal bluff edge shall be removed as a condition of approval.
- B. No grading shall occur from November 15th to March 31st for any projects involving a total of more than 25 cubic yards of cut and/or fill grading. If vegetative erosion control is used (i.e. landscape planting, seeding, mulching, fertilization, and irrigation), the installation shall occur with sufficient time to achieve landscape coverage prior to the November 15th start of the rainy season.
- C. All drainage from the impervious surfaces of the site shall be collected and appropriately discharged in a manner that will not contribute to further erosion of the coastal bluff or vulnerable slope. Drainage shall be conveyed away from any coastal bluff face, and where available, into existing developed storm drain systems capable of handling the drainage without adverse impact to coastal bluffs. The responsibility for maintenance of drainage and erosion control facilities shall rest with the applicant unless such responsibility is assumed by another agency or party found acceptable by the Planning Director.
- D. The development shall not result in an increase in peak runoff from the site over the greatest discharge expected during a 10-year, 6- hour frequency storm. Runoff control shall be accomplished by a variety of measures including, but not limited to, temporary and/or permanent on-site catchment basins, detention basins, siltation traps, energy dissipaters and the installation of landscape material.
- E. New subdivisions shall not be approved unless:
 1. All parcels created meet the standards for new development and provide safe, legal, all-weather access to each parcel created;
 2. Each lot created is capable of supporting development per the underlying zone without a shoreline protective device; and

3. A notice is recorded against each lot to waive rights to future shoreline protective devices for new development. (This shall not preclude the ability for an owner to submit a future permit application request to protect existing development.)

SECTION FOURTEEN

That Section 30.55.060 of the Municipal Code be repealed and replaced as follows:

30.55.060 Required Permit for Development in the Coastal Bluff Overlay Zone

- A. A Coastal Development Permit in accordance with Chapter 30.75 shall be required for proposed development within the Coastal Bluff Overlay Zone that does not meet a permit exemption pursuant to Section 30.75.200 (subsections B through K only). Notwithstanding any other provision, the replacement of a structure destroyed by disaster shall be exempt from a Coastal Development Permit where the replacement structure conforms with all of the following:
 1. Complies with existing zoning requirements
 2. Is for the same use as the destroyed structure
 3. Does not exceed the floor area, height, or bulk of the destroyed structure by more than 10 percent
 4. Is sited in generally the same location on the affected property as the destroyed structure
- B. The decision maker may include permit conditions of approval as deemed necessary to protect the public health, safety, and welfare and to ensure compliance with the findings supporting such approval consistent with the City's certified Land Use Plan. The permit conditions may include, but shall not be limited to:
 1. Compliance with the Coastal Development Permit general conditions of approval in Section 30.75.150.
 2. Recordation of a notice on the title to property that:
 - a. Identifies the property is located in the Coastal Bluff Overlay Zone.

- b. Acknowledges owner responsibility for maintenance and repair of drainage and erosion control systems pursuant to a detailed maintenance program.
 - c. Waives the right to future shoreline protective devices for the new development. (This shall not preclude the ability for an owner to submit a future permit application request to protect existing development.)
3. Any requirements for supplemental technical reports, maintenance, monitoring, or reporting.
 4. Recordation of an open space deed restriction, conservation easement, or open space easement for any areas to be retained in their natural state.
- C. In accordance with the California Public Resources Code Section 30010, this Chapter is not intended, and shall not be construed as authorizing any public agency acting pursuant to this Chapter to exercise their power to grant or deny a permit in a manner which will take or damage private property for public use, without payment of just compensation therefor. This section is not intended to increase or decrease the rights of any owner of property under the Constitution of the State of California or the United States.

SECTION FIFTEEN

That Section 30.55.070 of the Municipal Code be repealed and replaced as follows:

30.55.070 Submittal Requirements

- A. In addition to the standard submittal requirements for a Coastal Development Permit, the application shall include the following to the satisfaction of the Planning Director:
1. A topographic map that delineates the location of all coastal bluffs and vulnerable slopes located on site or off site in proximity to the development proposal and identifies the coastal bluff edge of all coastal bluffs (as defined in Section 30.55.030). Maps shall be of a scale not less than 1" equals 100' and shall delineate the topography of the site in two-foot contour intervals.
 2. A geotechnical report prepared and signed by a licensed professional with expertise in coastal processes that includes the following:

- a. Identifies existing conditions, including existing development;
 - b. Identifies the suitability of the site for the proposed development and whether shoreline protection is projected to be necessary over a 75 year time period to protect the development;
 - c. Provides an analysis of bluff retreat and coastal stability for the project site, according to accepted professional standards, including an analysis of whether the affected section of coastline is under a process of retreat;
 - d. Provides an analysis of the potential effects on bluff stability of rising sea levels, using best available scientific information;
 - e. Provides an analysis of the potential effects of past and projected El Nino events on bluff stability; and
 - f. Includes recommended mitigation measures as they relate to avoidance of risks over the economic life of the development (minimum 75 years) and preservation of fragile bluff systems. Recommendations should take into consideration the projected rates of bluff and shoreline retreat, and relevant beach nourishment projects. In the event that a submitted report recommends a coastal bluff top setback of a greater distance than otherwise minimally required in this Chapter, the greater distance shall be provided.
 - g. The Planning and Community Development Director may exempt a project from the requirement for this technical report if the proposed development is minor in nature, does not include a subdivision map, and would not modify the foundation or 50 percent or more of the exterior walls of an existing structure, 50 percent or more of the floor area of an existing structure, or expand the existing structure by 50 percent or more.
3. A detailed grading plan.
 4. A detailed landscape plan.

5. An erosion and sediment control plan prepared by a licensed civil engineer to the satisfaction of the City Engineer that identifies all permanent and temporary erosion control measures.
 6. A stormwater runoff control plan that incorporates structural and non-structural Best Management Practices (BMPs) and a monitoring component.
- B. At the discretion of the Planning Director, the applicant may be required to provide funding for an independent, third party analysis of the information provided by the applicant pursuant to the application submittal requirements of this Section. The purpose of said third-party analysis is to ensure the project's consistency with the standards of review contained in this Chapter.

SECTION SIXTEEN

That Section 30.55.080 of the Municipal Code be repealed.

SECTION SEVENTEEN

That Section 30.55.090 of the Municipal Code be repealed.

SECTION EIGHTEEN

That Section 30.55.100 of the Municipal Code be repealed.

SECTION NINETEEN

That Section 30.55.110 of the Municipal Code be repealed.

SECTION TWENTY

That Section 30.55.120 of the Municipal Code be repealed.

SECTION TWENTY ONE

That Section 30.55.130 of the Municipal Code be repealed.

SECTION TWENTY TWO

That Section 30.56.010 of the Municipal Code be revised as follows:

30.56.010 Purpose

- A. The Floodplain Overlay Zone applies to flood prone properties, as mapped by the Federal Emergency Management Agency (FEMA), that are subject to periodic inundation due to coastal wave action or flooding within the 100-year floodplains of the San Dieguito River, San Dieguito Lagoon, and the Los Penasquitos Lagoon.
- B. The purpose of the Floodplain Overlay Zone is to protect the public health, safety and general welfare, while employing regulations consistent with the rights of private property owners, by prohibiting incompatible development in flood prone areas; and ensuring that new development is appropriately sited and constructed to minimize damage and avoid hazards. These regulations are also intended to ensure that development within the Floodplain Overlay Zone will not obstruct flood flow; will be designed to reduce the need for construction of flood control facilities; and minimize the cost of flood insurance to Del Mar residents.
- C. It is further intended that the Floodplain Overlay Zone meet FEMA floodplain management requirements for participation in the National Flood Insurance Program (NFIP), meet State of California coastal resiliency planning requirements for flood prone areas, and increase Del Mar's ability to adapt and protect neighborhoods, infrastructure, and coastal resources for future generations.
- D. The Floodplain Overlay Zone allows for coordinated planning to occur in advance instead of waiting to react to emergencies at which point public funds and insurance will likely be insufficient to remedy the extent of damage predicted.
- E. The provisions and sections of this Ordinance shall be deemed separable and the invalidity of any portion of this Ordinance shall not affect the validity of the remainder.

SECTION TWENTY THREE

That Section 30.56.020 of the Municipal Code be revised as follows:

30.56.020 Zone Boundaries and Real Estate Disclosure

- A. Property within the Floodplain Overlay Zone shall include those areas designated by Ordinance and depicted upon the corresponding City Zoning Map.
- B. Real Property within the Floodplain Overlay Zone shall be further designated as being within a Special Flood Hazard Area identified by the Federal Emergency Management Agency (FEMA) Flood Insurance Study

(FIS), dated June 16, 1999, and accompanying Flood Insurance Rate Map (FIRM), dated June 16, 1999, and all subsequent amendments and/or revisions are hereby adopted by reference and declared to be subject to the Chapter 30.56 Floodplain Overlay Zone requirements.

1. This FIS and associated mapping are the minimum area of applicability for this Overlay Zone and may be supplemented by studies recommended to the City Council by the Floodplain Administrator as necessary to implement floodplain management. The FIS and FIRM are on file in the City of Del Mar.
 2. Where technical or scientific data is presented to the City indicating the base flood elevation will increase or decrease as a result of physical changes affecting flooding conditions, the City shall submit the data to FEMA in accordance with the code of federal regulations so that upon confirmation by FEMA, risk premium rates and floodplain management requirements will be based on current data and the mapped boundary can be amended accordingly (Title 44 Section 65.3). The information shall be submitted to FEMA as soon as practicable, but not later than 6 months after the date of final action approving any physical changes that will affect flood conditions.
 3. A Letter of Map Change (LOMC) is a formal document that communicates an official modification to an effective FIRM. LOMCs are issued in place of a physical alteration and re-publication of the map.
 4. The set of effective FIRM, FIS, and National Flood Hazard Layer Database, as well as any effective Letters of Map Change (LOMC) that have been issued to revise or amend the FIRM or FIS, collectively comprise FEMA's official flood hazard determination for a given area.
- C. The zone boundaries identified shall not imply that land outside of the Floodplain Overlay Zone, or that development permitted within the Overlay Zone, will be free from flooding or flood damage.
- D. All real estate transactions within the boundary of this Overlay Zone shall disclose that the property is located in the Floodplain Overlay Zone.

SECTION TWENTY FOUR

That Section 30.56.030 of the Municipal Code be revised as follows:

30.56.030 Definitions

Unless specifically defined below, words or phrases used in this Chapter shall be interpreted so as to give them the meaning they have in common usage and to give this Chapter its most reasonable application.

Area of Shallow Flooding [No change]

Area of Special Flood Hazard shall mean an area having special flood or flood-related erosion hazards, and which are designated on an FHBM or FIRM as Zone A, AO, A 1-30, AE, A99, AH, V1-30, VE, or V.

Base Flood shall mean a flood having a one percent chance of being equaled or exceeded in any year. "Base Flood" shall mean the same as "100-year Flood".

Basement. For the purposes of this Chapter, "Basement" shall mean, for the purpose of Chapter 30.56 only, any area of a building having its floor below ground level - on all sides.

Breakaway Wall [No change in text]

Coastal High Hazard Area shall mean an area of special flood hazard extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic forces. Such areas are subject to high velocity waters, including coastal and tidal inundation or tsunamis. Coastal High Hazard Areas are designated on the Flood Insurance Rate Map (FIRM) as being in Zone V1-30, VE or V.

Development [No change in text]

Director [No change in text]

Encroachment shall mean, for the purpose of Chapter 30.56 only, the advance or infringement of uses, plant growth, fill, excavation, buildings, permanent structures or development into a floodplain that may impede or alter the flow capacity of a floodplain.

Existing Development shall mean any structure or development that was lawfully established, altered, and maintained pursuant to the Del Mar Municipal Code (or preceding San Diego County ordinances).

Flood Insurance Rate Map (FIRM) [No change in text]

Flood Insurance Study shall mean the official report provided by the Federal Emergency Management Agency that includes flood profiles, the Flood

Insurance Rate Map (FIRM), and Flood Boundary and Floodway Map, and the water surface elevation of the base flood.

Floodplain or Flood-prone area [No change in text]

Flood-proofing [No change in text]

Floodway [No change in text]

Freeboard means a factor of safety usually expressed in feet above flood level for purposes of floodplain management. Freeboard tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, bridge openings, and the hydrological effect of urbanization of the watershed.

Hardship [No change in text]

Hazard Mitigation Plan [No change in text]

Highest adjacent grade [No change in text]

Historic Structure means any structure that is:

1. Listed individually in the National Register of Historic Places or California Register of Historic Places;
2. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district; or
3. Listed individually on a local inventory of historic places.

Lowest Floor [No change in text]

Manufactured Home shall mean a building, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. For floodplain management purposes, the term "manufactured home" also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days, but does not include Recreational Vehicles as defined in this Chapter.

Mean Sea Level [No change in text]

New Construction shall mean, solely for the purposes of FEMA determining NFIP insurance rates, structures for which the "start of construction" commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures.

Obstruction [No change]

One-hundred Year Flood [No change]

Recreational Vehicle shall mean a vehicle, which is:

1. Built on a single chassis;
2. 400 square feet or less in size;
3. Designed to be self-propelled or permanently towable by a light-duty truck; and
4. Designed primarily not for use as a permanent dwelling, but as a temporary living quarters for recreational camping or travel.

Special Flood Hazard Area (SFHA) shall mean an area having special flood, mudslide or flood related erosion hazards and which is shown on an FHMB or FIRM as Zone A, AO, A1-30, AE, A99, AH, M, V1-30, VE, or V.

Start of Construction [No change in text]

Structure [No change in text]

Substantial Damage [No change in text]

Substantial Improvement

1. *Substantial Improvement* shall mean any repair, reconstruction or improvement of a structure, when, pursuant to a determination by the Director, the cost of the repair, reconstruction or improvement equals or exceeds fifty percent of the market value of the structure either:
 - a. Before the improvement or repair is started, or
 - b. If the structure has been damaged 50% or more and is being restored, as it existed before the damage occurred.

2. For purposes of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure.
3. The term "Substantial Improvement" does not however, include either:
 - a. Any project for improvement of a structure to comply with existing state or local health, sanitary or safety code specifications which are solely necessary to assure safe living conditions, or
 - b. Any alteration of a structure listed on the National Register of Historic Places or a State Inventory California Register of Historic Places.

Variance shall mean a grant of relief from the floodplain requirements of this ordinance in accordance with Section 30.56.080, which permits construction in a manner that would otherwise be prohibited by this ordinance for the purpose of Chapter 30.56 shall not require a Variance application pursuant to Del Mar Municipal Code Chapter 30.78.

Violation means, solely for the purposes of FEMA determining NFIP flood insurance program compliance, the failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure without a required FEMA Elevation Certificate or other evidence of compliance is presumed to be in violation until such time as that documentation is provided.

Water surface elevation [No change in text]

Watercourse [No change in text]

SECTION TWENTY FIVE

That Section 30.56.040 of the Municipal Code be revised as follows:

30.56.040 Allowed Uses

Unless otherwise specified herein, allowable uses in the Floodplain Overlay Zone shall be limited to the following subject to the receipt of required permits in accordance with Section 30.56.050:

- A. Any use or accessory use permitted in the underlying zone and applicable overlay zones, subject to the same conditions and restrictions applicable to such zones.
- B. Any irrigation, drainage or flood control structure or facility, and/or any public facility or improvement necessary for maintaining a lagoon, waterway or floodway system.

SECTION TWENTY SIX

That Section 30.56.045 of the Municipal Code be revised as follows:

30 56.045 Floodplain Development Permit Required Development Regulations for the Floodplain Overlay Zone

- A. Prior to development in the Floodplain Overlay Zone, required permits shall be obtained in accordance with Section 30.56.050.
- B. Shoreline protective devices are permitted only where consistent with the Beach Overlay Zone (Chapter 30.50) or as otherwise provided for by the California Coastal Act to protect existing development.
- C. No new basements or expansion of existing basements shall be allowed in the AE or VE zones.
- D. Relief from the requirements in Chapter 30.56 may be requested with an application for a Floodplain Development Permit in accordance with Section 30.56.080 without need for a Variance application.

SECTION TWENTY SEVEN

That Section 30.56.050 of the Municipal Code be revised as follows:

30.56.050 Required Permits for Development in the Floodplain Overlay Zone

- A. Development in the Floodplain Overlay Zone requires approval of the following permits, unless the development is limited to interior modifications or repairs, or exterior repairs, alterations or maintenance that does not increase the footprint of an existing structure:
 - 1. Floodplain Development Permit in accordance with Section 30.56.050

2. Coastal Development Permit pursuant to Chapter 30.75. Notwithstanding any other provision, the replacement of a structure destroyed by disaster shall be exempt from a Coastal Development Permit where the replacement structure conforms with all of the following:
 - a. Complies with existing zoning requirements
 - b. Is for the same use as the destroyed structure
 - c. Does not exceed the floor area, height, or bulk of the destroyed structure by more than 10 percent
 - d. Is sited in generally the same location on the affected property as the destroyed structure
 3. In accordance with the California Public Resources Code Section 30010, this Chapter is not intended, and shall not be construed as authorizing any public agency acting pursuant to this Chapter to exercise their power to grant or deny a permit in a manner which will take or damage private property for public use, without payment of just compensation therefor. This section is not intended to increase or decrease the rights of any owner of property under the Constitution of the State of California or the United States.
- B. The Floodplain Development Permit application shall include data and certifications prepared by a registered engineer or architect as necessary to provide supporting calculations and studies for all information required, which shall include, but not be limited to:
1. The elevation, expressed in relation to NGVD, of all floors (including basements) of all proposed and existing structures of the project site;
 2. The proposed elevation, expressed in relation to NGVD, of all proposed flood proofing; and
 3. A description of the extent to which any watercourse will be altered or relocated as a result of the proposed development; and
 4. Certification by a registered professional engineer/architect that all design and methods of construction meet elevation and anchoring standards per the code of federal regulations (Title 44 Section 60.3).

- C. Upon submission of a complete application and payment of the application fee, the Director shall provide notice of the filed application for a Floodplain Development Permit, with members of the public given the opportunity to review the application at City Hall, and the opportunity to submit written information to the Director. Notice shall be provided:
 - 1. In accordance with the noticing requirements for public hearings stated in this Title, for discretionary permit applications;
 - 2. Through notification to adjacent local agencies and the applicable State coordinating agencies, and through submitting evidence of such notification to the Federal Emergency Management Agency and the Federal Insurance Administration.

- D. A determination on the Floodplain Development Permit application shall be made by the Issuing Authority as set forth below:
 - 1. For applications, which have been deemed to be in compliance with all of the applicable provisions of this Chapter, the Director of Planning and Community Development shall be the Issuing Authority for the Floodplain Development Permit.
 - 2. For applications which do not meet one or more of the applicable provisions of this Chapter and for which relief from such provisions is requested by the applicant in accordance with Section 30.56.080, the Planning Commission shall be the Issuing Authority for the Floodplain Development Permit.

- E. The Issuing Authority for the Floodplain Development Permit shall review the application to ensure that all other required state and federal permits are obtained, and shall approve, conditionally approve, or deny the application based upon the regulations of this Chapter.
 - 1. The Issuing Authority may impose conditions in the permit as necessary and or authorized to ensure the project's continued compliance with the provisions of this Chapter.
 - 2. All Floodplain Development Permits shall require that prior to the issuance of a Building Permit, the applicant shall record a notice that acknowledges the property is located in the Floodplain Overlay Zone.

- F. For a period of at least five years following the date of submittal of a Floodplain Development Permit application, the Director shall maintain a record of all information submitted as part of the application, including the

certifications where base flood elevation is utilized, of lowest floor and of all proposed finished floor elevations and elevations of flood proofing elevations required pursuant to this Chapter and the code of federal regulations (Title 44 Section 60.3).

- G. Upon a determination on the application by the Issuing Authority, the Director shall post a notice of determination at City Hall. Such Notice shall provide that the determination will be final in ten days unless an appeal to the City Council is filed in accordance with the provisions of this code.

SECTION TWENTY EIGHT

That Section 30.56.060 of the Municipal Code be revised as follows:

30.56.060 General Grounds for Application Approval/Denial

The application for a Floodplain Development Permit shall be approved if the Issuing Authority makes a finding that the proposal meets and is consistent with each of the applicable findings shown below, unless relief is granted in accordance with Section 30.56.080. The failure of the proposal to meet and be consistent with each of the applicable findings shown below shall be grounds for denial of the application. Such denial shall be supported by written findings of fact by the Issuing Authority as to how the application fails to meet one or more of the following findings:

The proposed new construction or substantial improvement:

- A. Will not violate the building or zoning regulations of the City.
- B. Will be anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.
- C. Will be constructed with materials and utility equipment resistant to flood damage.
- D. Will use methods and practices that minimize flood damage.
- E. Will involve a residential structure in an A, AE or AH Zone, and will have the lowest floor (including basement) of such structure elevated at or above the base flood elevation.
- F. Will involve a manufactured home that will be elevated on a permanent foundation such that the lowest floor is at or above the base flood

elevation and is securely anchored to an adequately anchored foundation system.

- G. Will involve a nonresidential structure and will have the lowest floor (including basement) elevated to or above the base flood level or, together with attendant utility and sanitary facilities will be flood proofed below the base flood level to the extent that the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy, as certified by a registered professional engineer or architect.
- H. Will be in an area of shallow flooding (Zone AO on the community's FIRM) and will have the lowest floor (including basement) elevated at or above the depth number indicated on the most current FIRM; or if there is no depth number on the most current FIRM, the structure will be elevated at least three feet above the highest adjacent grade. As an alternative, nonresidential structures, together with attendant utility and sanitary facilities, may be flood proofed to that level as specified in this Chapter.
- I. Will be in Zones AO and AH on the FIRM and will have adequate drainage paths around structures situated on sloping ground, to guide floodwaters around and away from said structures.
- J. Will involve the flood proofing of a nonresidential structure using a design and/or methods of construction that are in accordance with accepted standards of practice for flood proofing or which will extend the flood proofing to an elevation which is required pursuant to the provisions of this Chapter.
- K. Will have all new and replacement water supply and sanitary sewage systems designed to minimize or eliminate infiltration of flood waters into the system and discharges from the system into flood waters.
- L. Will have on-site waste disposal systems located to avoid impairment to them, or contamination from them, during flooding.
- M. Will have all electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
- N. Will have all fully enclosed areas below the lowest floor that are subject to flooding designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters with designs certified by a registered professional engineer or architect; or will have at

least two openings no more than one foot above grade with a total net area of at least one square inch per square foot of flooded area.

- O. Will be located in an area that is reasonably safe from flooding.
- P. Will not adversely affect the carrying capacity of areas where base flood elevations have been determined but a floodway has not been established. For purposes of this Section, “adversely affects” shall mean that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will increase the water surface elevation of the base flood elevation more than one foot at any point.
- Q. Will not be sited and designed so as to require the construction or installation of flood protective works.

Relief from the requirements in Chapter 30.56 may be requested with an application for a Floodplain Development Permit in accordance with Section 30.56.080 without need for a Variance application.

SECTION TWENTY NINE

That Section 30.56.070 of the Municipal Code be revised as follows:

30.56.070 Additional Grounds for Application Approval/Denial (Coastal High Hazard)

- A. An application for a Floodplain Development Permit for a project located in an area designated as being within the Coastal High Hazard Sub-zone shall be approved if the Issuing Authority makes a finding that the proposal meets and is consistent with each of the applicable findings shown below, unless relief is granted in accordance with Section 30.56.080. The failure of the proposal to meet and be consistent with each of the applicable findings shown below shall be grounds for denial of the application. Such finding for denial shall be supported by written findings of fact by the Issuing Authority as to how the application fails to meet one or more of the following findings:
 - 1. The new construction or substantial improvement will not violate provisions of this or other sections of this Chapter, including those regarding General Grounds for Application Denial;
 - 2. The new construction or substantial improvement will be located landward of the ordinary high water mark (commonly known as the

reach of mean high tide line), unless otherwise approved by the State Lands Commission;

3. The new construction or substantial improvement will not involve the use of fill for structural support of buildings, unless relief is granted in accordance with Section 30.56.080;
 4. The new construction or substantial improvement, unless relief is granted in accordance with Section 30.56.080, will be elevated on pilings or columns such that:
 - a. The bottom of the lowest horizontal structural member of the lowest floor (excluding pilings or columns) is elevated at or above the base flood elevation; or
 - b. The pile or column foundation and the attached structure is anchored to resist flotation, collapse or lateral movement due to the effect of wind and water loads having a one percent chance of being equaled or exceeded in any given year, acting simultaneously on all building components.
 5. The new construction or substantial improvement will have the space below the lowest floor free of obstruction or constructed with non-supporting breakaway walls, open wood lattice work or insect screening intended to collapse under wind and water load without causing collapse, displacement or other structural damage to the elevated portion of the building or supporting foundation system; or such enclosed space is non-habitable and is not useable for other than parking of vehicles, building access, or storage.
- B. If additional information is needed to more fully assess the future risk of flood hazards to the proposed development over its economic life and substantiate a decision on the permit, at the discretion of the Planning Director or Issuing Authority, the applicant may be required to provide funding for an independent, third party analysis of the coastal hazards to be prepared by a licensed professional with expertise in coastal processes.
- C. Relief from the requirements in Chapter 30.56 may be requested with an application for a Floodplain Development Permit in accordance with Section 30.56.080 without need for a Variance application.

SECTION THIRTY

That Section 30.56.080 of the Municipal Code be revised as follows:

30.56.080 Relief from Regulations

An application for a Floodplain Development Permit may include a request for relief from one or more of the regulations contained in this Chapter without need for a Variance application. The Issuing Authority for the Permit may approve the request only upon making each of the following written findings of fact that:

- A. The failure to grant the request would result in exceptional hardship to the applicant or to adjacent properties;
- B. The granting of the request will not:
 - 1. Result in increased flood heights either on the project site or on surrounding properties,
 - 2. Result in additional threats to public safety,
 - 3. Result in extraordinary public expense,
 - 4. Create a public or private nuisance,
 - 5. Cause fraud on or victimization of the public, or
 - 6. Conflict with other City regulations; and
- C. The deviation from the requirements of the Chapter is the minimum necessary to afford relief, considering the flood hazard associated with the site.

SECTION THIRTY ONE

That the title to Section 30.56.082 of the Municipal Code be revised as follows:

30.56.082 Acknowledgment of Hazard/Waiver of Liability for Projects Approved with Relief from Chapter

[No change in text]

SECTION THIRTY TWO

That Section 30.56.090 of the Municipal Code be revised as follows:

30.56.090 Additional Regulations Relating to the Storage of Materials or Equipment within a Special Flood Hazard Area

The following restrictions apply to properties located within a Special Flood Hazard Area.

- A. It shall be prohibited to store or process materials that, in a time of flooding, may become buoyant, flammable, explosive, or could be injurious to human, animal or plant life.
- B. The storage of other material or equipment may be allowed if the storage area will not be subject to major damage by floods and if the stored material is firmly anchored to prevent flotation or is readily removable from the area within the time available after flood warning.

SECTION THIRTY THREE

That Section 30.56.100 of the Municipal Code be revised as follows:

30.56.100 Warning and Disclaimer of Liability

The standards in this Chapter are reasonable for regulatory purposes and are based on scientific and engineering considerations largely determined by the Federal Emergency Management Agency. Floods may occur which result in damage. This Chapter is not intended to imply that development in accordance with these standards is immune from flood damage or that development on properties outside the areas designated as Special Flood Hazards Areas (i.e. areas of mudslide or mudflow) will continually be free from flooding or flood damages. In including and enforcing the provisions of this Chapter, the City, including any officer or employee thereof, shall not assume liability for any flood damages that result from reliance on this Chapter or from any decision or action on a permit application lawfully made thereunder.

SECTION THIRTY FOUR

Staff determined the proposed Zone Code Amendment/Local Coastal Program Amendment is exempt from preparation of an environmental document pursuant to CEQA Guidelines Section 15061(b)(3) because this activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. The proposed amendments disclose potential hazards, do not involve any type of expansion of use or development potential, and would not have a significant effect on the environment.

SECTION THIRTY FIVE

This Ordinance was introduced by the City Council on October 15, 2018.

SECTION THIRTY SIX

The City Clerk is directed to prepare and have published a summary of this Ordinance no less than five days prior to the consideration of its adoption and again within 15 days following adoption indicating votes cast.

SECTION THIRTY SEVEN

If any section, subsection, sentence, clause, phrase or portion of this Ordinance is, for any reason, held invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance.

SECTION THIRTY EIGHT

The Ordinance will be submitted to the Coastal Commission for final certification of the Local Coastal Program Amendment.

SECTION THIRTY NINE

The Ordinance will take effect and be in force on the date that the California Coastal Commission takes action to unconditionally certify the Local Coastal Program Amendment.

PASSED, APPROVED AND ADOPTED at a regular meeting of the City Council held on the ____ day of _____ 2018.

Dwight Worden, Mayor
City of Del Mar

APPROVED AS TO FORM:

Leslie E. Devaney, City Attorney
City of Del Mar

ATTEST AND CERTIFICATION:

STATE OF CALIFORNIA
COUNTY OF SAN DIEGO
CITY OF DEL MAR

I, ASHLEY JONES, Administrative Services Director/City Clerk of the City of Del Mar, California, DO HEREBY CERTIFY, that the foregoing is a true and correct copy of Ordinance No._____, which has been published pursuant to law, and adopted by the City Council of the City of Del Mar, California, at a Regular Meeting held the ___ day of _____, 2018, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Ashley Jones, Administrative Services
Director/City Clerk
City of Del Mar

DRAFT LCPA: Floodway Zone, Coastal Bluff Overlay Zone, Floodplain Overlay Zone
(10/1/18)

LOCAL COASTAL PROGRAM AMENDMENT

Draft Amendments: Implementing Ordinances

Chapter 30.29 FLOODWAY ZONE (FW)

30.29.010 Zone ~~Boundaries Established.~~

Real property subject to the provisions of this Chapter shall be designated by ordinance on the City zone map as being within the Floodway Zone ("FW"). ~~The zone boundaries identified shall not imply that land outside of the Floodway Zone will be free from flooding or flood damage.~~

30.29.020 Purpose:

- A. The purpose of the FW Zone is to preserve areas subject to relatively deep and high velocity floodwater by prohibiting uses which would constitute an unreasonable, unnecessary, undesirable or dangerous impediment to the flow of floodwaters, or cause a cumulative increase in the water surface elevation of the base flood of more than one foot at any point.
- B. It is also the purpose of the FW Zone to reduce the need for construction of flood control facilities made necessary by inadequately controlled development in the floodplain.
- C. It is also the purpose of the FW Zone to protect the health, safety, and general welfare of persons and of property located within and adjacent to the floodway by prohibiting the construction of permanent structures in the floodway and allowing only those uses which will not constitute an undesirable, unnecessary or dangerous impediment to the flow of floodwaters.

30.29.025 Definitions

~~The definitions in Section 30.56.030 shall apply to Chapter 30.29.~~

30.29.030 Allowed Uses:

~~The Except as provided per Section 30.29.060, the following uses are allowed in the FW Zone provided that a Floodplain Development Permit, Conditional Use Permit and Coastal Development Permit the required permits have first been obtained in accordance with Section 30.29.050.~~

- A. Field and seed crops (open field).
- B. Aquaculture and mariculture operations.
- C. Open recreational uses (such as public parks) in accordance with the San Dieguito Lagoon Enhancement Plan.

- D. Any similar use which conforms to the description and purpose of the FW Zone.

30.29.040 Specified Disallowed Uses:

The following uses are specifically disallowed, without limitation:

- A. Permanent Structures
- B. Placement of Mobile Homes
- C. Parking that does not serve one of the allowed uses
- D. Placement of fill

30.29.050 Required Permits for Development in the Floodway Zone

- A. Development in the Floodway Zone requires approval of the following permits:
 - 1. Floodplain Development Permit pursuant to Section 30.56.050
 - 2. Conditional Use Permit pursuant to Chapter 30.74
 - 3. Coastal Development Permit pursuant to Chapter 30.75
- B. Where base flood elevation data has not been provided by the Flood Insurance Study, the Floodplain Administrator shall obtain, review, and utilize base flood elevation and floodway data available from federal or state sources or require submittal of such data from the applicant. The Floodplain Administrator shall make interpretations, where needed as to the location of the boundaries of the areas of the Special Flood Hazard Area based on the best available engineering or scientific information.
- C. As a condition of approval, the applicant shall grant a flowage easement to the City for the portion of the property within the Floodway and appropriate agreements shall be secured between the applicant and City to assure participation by the applicant or any successor in interest in financing of future flood control works.

30.29.060 Development Regulations for the Floodway Zone

- A. Within the Floodway Zone:
 - 1. No structure or portion thereof shall be erected, constructed, converted, established, altered or enlarged, and no landform alteration grading, placement or removal of vegetation shall be permitted, except where a permit is obtained authorizing:
 - a. An open fence to limit access in order to protect the public health and safety or to protect sensitive environmental resources; or
 - b. As related to an allowed use identified in Section 30.29.030.

2. Structures shall not be attached to a foundation; and shall be removed upon imminence of flooding, as predicted by the National Weather Service or local weather broadcast. If a structure is not removed and flooding occurs, the retrieval or salvage of the structure and repair of any damage caused by the structure shall be the responsibility of the owner.
 3. Parking lots, new roadways, and roadway expansions shall be allowed only where consistent with the adopted Local Coastal Program Land Use Plan.
 4. Floodway encroachments for essential public utility and transportation crossings shall be allowed in accordance with DMMC Chapter 30.29 and the FEMA standards.
 5. Development, including new construction, significant modifications, or fill, is prohibited in the Floodway unless certification by a registered professional engineer is provided demonstrating that the development will not likely result in any increase in flood levels during the occurrence of the base flood discharge except as allowed under Code of Federal Regulations Title 44, Chapter 1, Part 60.3(c)(13).
- B. Development in the Floodway Zone shall be offset by improvements or modifications to enable passage of a base flood in accordance with FEMA standards.
- C. Development in the Floodway Zone shall not significantly adversely affect existing Environmentally Sensitive Habitat Areas on-site or off-site.
- D. Channelization or other substantial alteration of rivers or streams shall be limited to that necessary for the following:
1. Essential public service projects where no other feasible construction method or alternative project location exists;
 2. Flood control projects where no other feasible method for protecting existing public or private development exists and where such protection is necessary for public safety; and
 3. Projects where the primary function is the improvement of fish and wildlife habitat.
- E. Development that involves channelization or substantial alteration of rivers or streams is subject to the following requirements:
1. All requirements and relevant recommendations of hydrological studies for the watershed of the affected stream, as approved by the City Engineer, shall be incorporated into the project design and mitigation measures. These requirements include erosional characteristics, flow velocities, volume, sediment transport, and maintenance of hydrology.

2. The channel shall be designed to ensure that the following occur:
 - a. Stream scour is minimized;
 - b. Erosion protection is provided;
 - c. Water flow velocities are maintained as specified by the City Engineer;
 - d. There are neither significant increases nor contributions to downstream bank erosion and sedimentation of sensitive biological resources; acceptable techniques to control stream sediment include planting riparian vegetation in and near the stream and detention or retention basins;
 - e. Wildlife habitat and corridors are maintained;
 - f. Resource management criteria are implemented consistent with applicable land use plans; and
 - g. Groundwater recharge capability is maintained or improved.
 3. Channels that accommodate a base flood shall do so without increasing the water surface elevation more than one foot at any point from the level of a non-confined base flood in the natural undeveloped floodplain. Channels may accommodate less than a base flood (low-flow channels), but shall be designed and constructed in accordance with FEMA regulations.
 4. All artificial channels shall consist of natural bottoms and sides and shall be designed and sized to accommodate existing and proposed riparian vegetation and other natural or proposed constraints. Where maintenance is proposed or required to keep vegetation at existing levels compatible with the design capacity of the channel, a responsible party shall be identified and maintenance and monitoring process shall be established to the satisfaction of the City Engineer.
 5. In any case where a watercourse is to be altered, the flood carrying capacity of the altered or relocated portion of the watercourse shall be maintained and records of the permit decision shall be maintained and made available for public inspection regarding the associated certifications, appeals, or variances granted as applicable.
- F. Relief from the requirements in Section 30.29.060 may be requested with an application for a Floodplain Development Permit in accordance with Section 30.56.080 without need for a Variance application.

30.29.070 Notification Required

In any case where a watercourse is to be altered, notification shall be provided to adjacent communities, the California Coastal Commission, the California Department of Water Resources.

and the FEMA Federal Insurance Administration indicating that the permit records are available for public inspection.

[This Chapter of the Municipal Code forms a portion of the City of Del Mar Local Coastal Program Implementing Ordinances. The regulations found within this Chapter are not subject to "relief" through the Del Mar Variance process. Exceptions to, or relief from, the requirements found within this Chapter are limited to those specified within the language of this Chapter or found within other Chapters of the Implementing Ordinances. Where there is a conflict between the language of this Chapter and other portions of the Del Mar Municipal Code, the language of this Chapter shall take precedence.]

Chapter 30.55 Coastal Bluff Overlay Zone

30.55.010 Purpose-

- A. The purpose of the Coastal Bluff Overlay Zone is to protect Del Mar's fragile coastal bluffs as a visual resource and avoid the risks to life and property associated with bluff failure and shoreline erosion while employing regulations consistent with the rights of private property owners.
- B. The intent is to prohibit incompatible development in hazardous areas; ensure that new development is appropriately sited to minimize damage and avoid hazards; and reduce the need for shoreline protective devices.

Deleted: A. The Coastal Bluff Overlay Zone applies to properties with coastal bluffs or vulnerable slopes that based on best available science are identified as vulnerable to impacts associated with projected sea level rise and erosion of coastal bluffs. ¶
B

Deleted: C

Deleted: and provide disclosure of projected long term impacts in identified transitional areas to increase Del Mar's ability to plan ahead, adapt and protect neighborhoods, infrastructure, and coastal resources for future generations

30.55.020 Zone Boundaries and Real Estate Disclosure-

- A. Property within the Coastal Bluff Overlay Zone shall be include those areas designated by Ordinance to be and depicted upon the City Zone Zoning Map.
- B. All real estate transactions within the boundary of this Overlay Zone shall disclose that the property is located in the Coastal Bluff Overlay Zone.

30.55.030 Definitions-

- A- For purposes of this Chapter, the following definitions shall apply:
 - 1- Coastal Bluff shall mean a steep escarpment with a slope gradient equal to or greater than an average of one foot vertical to one foot horizontal and a vertical rise of 15 feet or more, and which is located in an area that is periodically subject to ocean wave action.
 - 2- Coastal Bluff Top Edge shall mean the top edge of a coastal bluff as delineated using the following criteria:
 - 1. a- In cases where the coastal bluff involves a series of stepped vertical and horizontal planes, the bluff top shall be considered to start at the seaward edge of the topmost riser of the vertical plane of the coastal bluff.

Deleted: C. Properties (with vulnerable slopes) designated within the "Transitional Subarea" are included in the Overlay Zone because they are identified as vulnerable to projected sea level rise and erosion over the long term planning horizon through year 2100 based on best available science. The Transitional Subarea is subject only to requirements for disclosure of the projected hazards. The Transitional Subarea is not subject to any of the Chapter 30.55 permit requirements or development regulations that apply to property with coastal bluffs (as defined by Section 30.55.030). ¶

2. ~~b.~~ In cases where the coastal bluff edge is composed of a continuous, rather than stepped, downward slope, the bluff top shall be considered to start at that point nearest the bluff, seaward of which the downward gradient of the land surface increases more or less continuously at an angle which is more vertical than horizontal until it reaches the general gradient of the bluff.

~~3. Top Edge of Coastal Bluff shall mean the same as Coastal Bluff Top.~~

~~4. Principal Structure shall mean a building or structure in which the primary use of the lot on which the building is located is being conducted.~~

~~5. Accessory Structure shall mean structures accessory or incidental to the principal structures on lot including, but not limited to, pools, spas, storage sheds, gazebos, and above grade decks or patios.~~

Existing development shall mean any structure or development that was lawfully established, altered, and maintained pursuant to the Del Mar Municipal Code (or preceding San Diego County ordinances).

Sea level rise shall mean the increase in the elevation of the ocean surface.

Shoreline protective device shall mean constructed features such as seawalls, revetments, riprap, earthen berms, cave fills, and bulkheads that are primarily used to protect structures or other features from erosion and other shoreline changes due to wave action.

Vulnerable slope shall mean a bluff that is vulnerable to projected sea level rise and erosion impacts, but does not currently meet the definition of a "Coastal Bluff".

30.55.040 Allowable Uses.

Unless **otherwise** specified herein, allowable uses in the Coastal Bluff Overlay Zone shall be **limited to** those uses and accessory uses allowed by the underlying zone **and applicable overlay zones**, subject to the regulations and restrictions of the underlying zone and of this Chapter.

30.55.050 Accessory Uses. [See underlying zone.]

30.55.050 Development Regulations for the Coastal Bluff Overlay Zone

- A. **Proposed development shall be sited and designed to avoid impacts from erosion hazards over the economic life of the development (minimum 75 years) in accordance with the following:**
 1. **A minimum 40-foot setback shall be provided between proposed development (including supporting structures and foundations) and a coastal bluff edge, except where otherwise provided below:**
 - a. **The setback from the coastal bluff edge shall have priority over required yard setbacks from the property line. If necessary to comply with setbacks from the coastal bluff edge and provide for reasonable use to avoid a taking, the decision maker may approve reduced yard setbacks**

- up to a minimum of 5 feet from the property line without need for a Variance application provided the development is consistent with all other applicable requirements of the certified Local Coastal Program.
- b. No grading shall be allowed within 40 feet of the coastal bluff edge, except as necessary to control surface runoff in accordance with Section 30.55.050(C). Grading or construction activities (on the face of a coastal bluff) shall only be permitted if approved as part of a Shoreline Protection Permit or Setback Seawall Permit pursuant to Chapters 30.50 and 30.51 respectively, and if the authorized review body makes a finding that the proposed grading is the minimum required to implement the authorized shoreline protection.
- c. At-grade accessory structures that do not require foundations (such as fences, windscreens, and benches) may be set back a minimum of ten feet from a coastal bluff edge if constructed using lightweight materials and without the use of grading and/or continuous foundation components.
2. Native plants and other drought-tolerant plant species shall be utilized to minimize irrigation and reduce the potential for over watering of the bluffs. No new irrigation systems shall be installed within 40 feet of the coastal bluff edge. Any existing irrigation systems located within 40 feet of the coastal bluff edge shall be removed as a condition of approval.
- B. No grading shall occur from November 15th to March 31st for any projects involving a total of more than 25 cubic yards of cut and/or fill grading. If vegetative erosion control is used (i.e. landscape planting, seeding, mulching, fertilization, and irrigation), the installation shall occur with sufficient time to achieve landscape coverage prior to the November 15th start of the rainy season.
- C. All drainage from the impervious surfaces of the site shall be collected and appropriately discharged in a manner that will not contribute to further erosion of the coastal bluff or vulnerable slope. Drainage shall be conveyed away from any coastal bluff face, and where available, into existing developed storm drain systems capable of handling the drainage without adverse impact to coastal bluffs. The responsibility for maintenance of drainage and erosion control facilities shall rest with the applicant unless such responsibility is assumed by another agency or party found acceptable by the Planning Director.
- D. The development shall not result in an increase in peak runoff from the site over the greatest discharge expected during a 10-year, 6- hour frequency storm. Runoff control shall be accomplished by a variety of measures including, but not limited to, temporary and/or permanent on-site catchment basins, detention basins, siltation traps, energy dissipaters and the installation of landscape material.
- E. New subdivisions shall not be approved unless:

1. All parcels created meet the standards for new development and provide safe, legal, all-weather access to each parcel created;
2. Each lot created is capable of supporting development per the underlying zone without a shoreline protective device; and
3. A notice is recorded against each lot to waive rights to future shoreline protective devices for new development. (This shall not preclude the ability for an owner to submit a future permit application request to protect existing development.)

~~30.55.060~~ — ~~Parking Requirements.~~ [See Chapter 30.80.]

~~30.55.070~~ — ~~Development Review.~~

~~Unless otherwise exempted by this Title, no building, improvement, structure, or portion thereof shall be erected, constructed, converted, established, altered or enlarged; nor shall any lot or premises be excavated or graded for any purpose including, but not limited to, in-ground structures such as swimming pools or spas; nor shall clearance of vegetation occur until both a Conditional Use Permit and a Coastal Development Permit are obtained from the Planning Commission. In reviewing such applications for Conditional Use Permits and Coastal Development Permits, the Planning Commission shall apply the standards of review contained in this Chapter, as well as the applicable provisions of Beach Overlay Zone and the underlying zone for the property.~~

~~30.55.080~~ ~~Setbacks from Coastal Bluffs.~~

- A. ~~Unless otherwise specified herein, all new or redeveloped principal or accessory structures, including new supporting foundations or supports for existing structures, shall be set back a minimum of 40 feet from the top edge of the coastal bluff as defined in this Chapter.~~
- B. ~~All new fences, windcreens, and benches shall be set back a minimum of ten feet from the top edge of the coastal bluff as defined in this Chapter. All such improvements, when providing less than the 40 foot coastal bluff top setback otherwise required in this Chapter, shall be constructed primarily above grade using light weight materials and without the use of grading and/or continuous foundation components.~~
- C. ~~No grading shall be allowed within 40 feet of the top edge of a coastal bluff.~~
- D. ~~No grading or construction activities shall be allowed on the face of a coastal bluff unless approved as part of a Shoreline Protection Permit or Setback Seawall Permit issued in accordance with the provisions of this Title and when the Planning Commission or City Council, as the authorized review body for the project, makes a finding that the proposed grading has been minimized to the extent feasible to implement the authorized shoreline protection.~~

30.55.060 Required Permit for Development in the Coastal Bluff Overlay Zone

- A. A Coastal Development Permit in accordance with Chapter 30.75 shall be required for proposed development within the Coastal Bluff Overlay Zone that does not meet a permit exemption pursuant to Section 30.75.200 (subsections B through K only). Notwithstanding any other provision, the replacement of a structure destroyed by disaster shall be exempt from a Coastal Development Permit where the replacement structure conforms with all of the following:
1. Complies with existing zoning requirements
 2. Is for the same use as the destroyed structure
 3. Does not exceed the floor area, height, or bulk of the destroyed structure by more than 10 percent
 4. Is sited in generally the same location on the affected property as the destroyed structure
- B. The decision maker may include permit conditions of approval as deemed necessary to protect the public health, safety, and welfare and to ensure compliance with the findings supporting such approval consistent with the City's certified Land Use Plan. The permit conditions may include, but shall not be limited to:
1. Compliance with the Coastal Development Permit general conditions of approval in Section 30.75.150.
 2. Recordation of a notice on the title to property that:
 - a. Identifies the property is located in the Coastal Bluff Overlay Zone.
 - b. Acknowledges owner responsibility for maintenance and repair of drainage and erosion control systems pursuant to a detailed maintenance program.
 - c. Waives the right to future shoreline protective devices for the new development. (This shall not preclude the ability for an owner to submit a future permit application request to protect existing development.)
 3. Any requirements for supplemental technical reports, maintenance, monitoring, or reporting.
 4. Recordation of an open space deed restriction, conservation easement, or open space easement for any areas to be retained in their natural state.
- C. In accordance with the California Public Resources Code Section 30010, this Chapter is not intended, and shall not be construed as authorizing any public agency acting pursuant to this Chapter to exercise their power to grant or deny a permit in a manner which will take or damage private property for public use, without payment of just compensation

Commented [AL1]: This is existing LCP requirement.

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therefor. This section is not intended to increase or decrease the rights of any owner of property under the Constitution of the State of California or the United States.

30.55.090 — Application Submittals.

30.55.070 Submittal Requirements

A. Applications for development of property which includes or lies in proximity to coastal bluffs as defined in this Chapter, In addition to the standard submittal requirements for a Coastal Development Permit, the application shall include the following to the satisfaction of the Planning Director:

1. A topographic maps, as necessary, to delineate that delineates the location of all coastal bluffs and vulnerable slopes located on site or off site in proximity to the development proposal. Said maps shall indicate the alignment of the top edges and identifies the coastal bluff edge of all such coastal bluffs (as defined in Section 30.55.030) this Chapter. Maps required by this Section shall be of a scale not less than 1" equals 100' and shall delineate the topography of the site in two-foot contour intervals.
- B. All applications for projects involving new construction on properties containing coastal bluffs shall be accompanied by a
 2. A geotechnical report addressing: prepared and signed by a licensed professional with expertise in coastal processes that includes the following:
 - 1) a. Identifies existing conditions, including existing development;
 - 2) b. Identifies the suitability of the site for the proposed construction development and whether shoreline protection is projected to be necessary over a 75 year time period to protect the development; and
 - 3) the potential of the proposed development to affect bluff stability over a 70-year life span of the project;
 - 4) the potential future need for shoreline protection during an expected 70-year life span of the project;
 - 5) c. Provides an analysis of bluff retreat and coastal stability for the project site, according to accepted professional standards, including an analysis of whether the affected section of coastline is under a process of retreat;
 - 6) d. Provides an analysis of the potential effects on bluff stability of rising sea levels, using latest best available scientific information;
 - 7) e. Provides an analysis of the potential effects of past and projected El Nino events on bluff stability; and
 - 8) an analysis of whether the affected section of coastline is under a process of retreat. The report shall also include
 - f. Includes recommended mitigation measures as they relate to avoidance of risks over the economic life of the development (minimum 75 years)

and preservation of fragile bluff systems. Recommendations should take into consideration the projected rates of bluff and shoreline retreat, and relevant beach nourishment projects. In the event that a submitted report recommends a coastal bluff top setback of a greater distance than otherwise minimally required in this Chapter, the greater distance shall be provided.

- g. The Planning and Community Development Director may exempt a project from the requirement for this technical report if the proposed development is minor in nature, does not include a subdivision map, and would not modify the foundation or 50 percent or more of the exterior walls of an existing structure, 50 percent or more of the floor area of an existing structure, or expand the existing structure by 50 percent or more.

In addition, for new development, the applicant shall acknowledge a waiver of all rights to future protective devices for the new development.

3. A detailed grading plan.
4. A detailed landscape plan.
5. An erosion and sediment control plan prepared by a licensed civil engineer to the satisfaction of the City Engineer that identifies all permanent and temporary erosion control measures.
6. A stormwater runoff control plan that incorporates structural and non-structural Best Management Practices (BMPs) and a monitoring component.

~~C.B.~~ At the discretion of the Planning Director, the applicant may be required to provide funding for an independent, third party analysis of the information provided by the applicant pursuant to the application submittal requirements of this Section. The purpose of said third-party analysis is to ensure the project's consistency with the standards of review contained in this Chapter.

30.55.100 — Grading Methodology and Practice.

A. In addition to the other provisions of the Del Mar Municipal Code, projects located within the Coastal Bluff Overlay Zone shall be subject to the following provisions:

1. All projects involving grading shall be subject to the submittal of an erosion and sedimentation control plan. Said plan shall ensure that all drainage from the impervious surfaces of the site will be collected and appropriately discharged in a manner which will prevent drainage and/or erosion related damage to the coastal bluff or any other properties or improvements in the vicinity. In addition, the plan shall include the provision of drainage facilities to convey all drainage away from any coastal bluff face and, where available, into existing developed storm drain systems capable of handling all anticipated drainage flows associated with the proposed project. Where an existing storm drain system is not available, the plan shall provide that drainage will be conveyed to a clearly defined, legal natural drainage course which can be shown to have adequate capacity to handle all required drainage flows without adverse impact to coastal bluffs. All designs and

plans for drainage improvements shall be prepared by a licensed civil engineer and shall be subject to the review and approval of the City Engineer.

2. All projects requiring a Conditional Use Permit and a Coastal Development Permit pursuant to the provisions of this Chapter shall be subject to the submittal of a detailed landscape plan. Said plan shall ensure that native and other drought-tolerant plant species will be utilized in a manner that will minimize irrigation requirements and reduce the potential of slide hazards due to overwatering of the bluffs. Said plan will ensure that no new irrigation systems will be installed within 40 feet of the edge of the coastal bluff top and that any existing irrigation systems located within said 40-foot bluff top setback will be removed as part of project implementation.

3. All projects involving grading shall be subject to the submittal of an erosion and sedimentation control plan. Said plan shall ensure that the project will not result in an increase in peak runoff from the site over the greatest discharge expected during a 10-year, 6-hour frequency storm. Runoff control shall be accomplished by a variety of measures including, but not limited to, temporary and/or permanent on-site catchment basins, detention basins, siltation traps, energy dissipaters and the installation of landscape material. The required erosion and sedimentation control plan and any proposals to increase flows shall be subject to review and approval of the City Engineer.

4. All temporary erosion control measures proposed or required pursuant to the provisions of this Section including berms, interceptor ditches, sandbagging, hay bales, filtered inlets, debris basins, silt traps, or other similar measures shall be installed prior to the commencement of grading in the areas for which the erosion control measures are intended.

5. For projects involving a total of more than 25 cubic yards of cut and/or fill grading, no grading shall occur during the rainy season, identified for purposes of this Chapter as the period from November 15th to March 31st.

6. In addition to other erosion control measures required pursuant to this Chapter, all graded slopes shall be stabilized prior to the November 15th onset of the rainy season through the provision of vegetative erosion control. Vegetative erosion control may be achieved through measures such as: landscape planting, seeding, mulching, fertilization, and irrigation. The installation of vegetative erosion control shall occur with sufficient time to achieve landscape coverage prior to the November 15th start of the rainy season.

7. All permits shall be subject to the submittal of a polluted runoff control plan. The required plan shall incorporate the use of structural and non-structural Best Management Practices (BMPs), to the extent necessary, to minimize the discharge of pollutants carried by runoff from urban development into surface water drainage, and to maintain post-development peak runoff rate and average volume at levels similar to predevelopment levels. The plan shall include, but not be limited to the following Best Management Practices (BMPs), as applicable: silt traps, catch basins, oil/grit separators, street sweeping and cleaning program, low-maintenance landscape and pesticide management plan, solid waste management and public education program. The plan shall require that all new development and redevelopment infiltrate or treat all runoff from a 3/4 inch storm. The plan shall include a monitoring component to ensure long-term maintenance of BMPs as relevant, and to allow for continued evaluation of the effectiveness of the polluted

~~runoff control plan in meeting the goals of LUP regarding the protection and enhancement of sensitive resources.~~

~~30.55.110 — Maintenance of Drainage and Erosion Control Measures.~~

~~A. Where the installation of erosion and/or drainage control measures is required pursuant to the provisions of this Chapter, the responsibility for maintenance of such measures shall rest with the applicant unless such responsibility is assumed by another agency or party found acceptable by the Planning Director.~~

~~B. The responsibility for maintenance of drainage and erosion control measures and a detailed maintenance program shall be included in an agreement(s) recorded against the deed for the property. The arrangements shall provide for the ongoing repair and maintenance of approved control measures to ensure continued effective erosion/drainage control.~~

~~30.55.120 — Retained Open Space/Conditions of Development.~~

~~A. Areas to be retained in their natural state pursuant to the provisions of this Chapter shall be subject to conditions to ensure the protection of the designated area(s) from future encroachment, disturbance, or degradation. Said conditions shall include the recordation of an open space deed restriction, conservation easement, or open space easement to ensure protection of the designated area and to serve notice to the property owner, subsequent owners, or interested parties of the restrictions in effect on such property.~~

~~30.55.130 Additional Development Standards for Subdivisions.~~

~~A. No subdivision shall be approved unless the Planning Commission makes a finding that the proposed design of the subdivision and its improvements will be consistent with the criteria of this Chapter. Specifically, no subdivision shall be approved for creation of a lot(s) which would be incapable of either: 1) supporting the construction of a use allowed within the underlying zone and of supporting such use without the installation or construction of a shoreline protective device; 2) supporting such construction with provision of the applicable Coastal Bluff Top setbacks and other resource protection measures required pursuant to this Chapter; or 3) supporting such use without the installation or construction of a bluff or shoreline protective device. As a condition of recording the subdivision, a deed restriction shall be placed on all proposed bluff top parcels, which waives all rights to future protective devices for new development. In reviewing the subdivision proposal, the Planning Commission shall take into consideration, the probable impacts that the project, including subsequent development on the lot(s), will have on preservation of coastal bluffs and the avoidance of hazards.~~

[This Chapter of the Municipal Code forms a portion of the City of Del Mar Local Coastal Program Implementing Ordinances. The regulations found within this Chapter are not subject to “relief” through the Del Mar Variance process. Exceptions to, or relief from, the requirements found within this Chapter are limited to those specified within the language of this Chapter or found within other Chapters of the Implementing Ordinances. Where there is a conflict between the language of this Chapter and other portions of the Del Mar Municipal Code, the language of this Chapter shall take precedence.]

Chapter 30.56 Floodplain Overlay Zone

30.56.010 Purpose

- A. ~~This overlay zone is composed of those~~ The Floodplain Overlay Zone applies to flood prone properties, as mapped by the Federal Emergency Management Agency (FEMA), that are subject to periodic inundation due to coastal wave action or flooding located within the 100-year floodplains of the San Dieguito River, San Dieguito Lagoon, and the Los Penasquitos Lagoon which have been identified by the Federal Insurance Administration as being subject to periodic inundation due to flooding.
- B. The purpose of the regulations of this Chapter Floodplain Overlay Zone is to promote protect the public health, safety and general welfare, while employing regulations consistent with the rights of private property owners, by prohibiting incompatible development in flood prone areas; and ensuring that new development, as defined herein, is appropriately sited and constructed so as to avoid hazards to those who will occupy the development; and to avoid to minimize damage or and avoid hazards to the surrounding area. These regulations are also intended to ensure that development within the Floodplain Overlay Zone will not obstruct flood flow; will be designed to reduce the need for construction of flood control facilities that would be required if unregulated development were to occur; and to minimize the cost of flood insurance to Del Mar residents.
- C. In order to accomplish its purposes, this Chapter includes regulations that prohibit development that would result in increases in erosion or flood levels through the inappropriate placement of fill or barriers. The Chapter also includes regulations to prohibit or restrict uses, which would otherwise be incompatible with flood prone areas. It is further intended that the Floodplain Overlay Zone meet FEMA floodplain management requirements for participation in the National Flood Insurance Program (NFIP), meet State of California coastal resiliency planning requirements for flood prone areas, and increase Del Mar's ability to adapt and protect neighborhoods, infrastructure, and coastal resources for future generations.
- D. The Floodplain Overlay Zone allows for coordinated planning to occur in advance instead of waiting to react to emergencies at which point public funds and insurance will likely be insufficient to remedy the extent of damage predicted.
- E. The provisions and sections of this Ordinance shall be deemed separable and the invalidity of any portion of this Ordinance shall not affect the validity of the remainder.

Deleted: Properties within the Overlay Zone are also vulnerable to flooding impacts in association with sea level rise as projected based on best available science.

30.56.020 Zone Boundaries and Real Estate Disclosure

- A. Property within the Floodplain Overlay Zone shall be include those areas designated by Ordinance to be and depicted upon the corresponding City Zone Zoning Map.
- B. Real Property within the Floodplain Overlay [FPO] Zone shall be further designated by ordinance on the City Zone Map as being within: 1. A special flood hazard area a Special

Flood Hazard Area identified by the Federal Insurance Administration (FIA) of the Federal Emergency Management Agency (FEMA) in the San Diego County and incorporated areas Flood Insurance Study (FIS), dated June 16, 1999, and accompanying Flood Insurance Rate Map (FIRM), dated June 16, 1999, and all subsequent amendments and/or revisions are hereby adopted by reference and declared to be a part of this ordinance and subject to the Chapter 30.56 Floodplain Overlay Zone requirements.

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1. This FIS and attendant associated mapping are the minimum area of applicability for this ordinance **Overlay Zone** and may be supplemented by studies for other areas that allow implementation of this ordinance and are recommended to the City Council by the Floodplain Administrator as necessary to implement floodplain management. The FIS and FIRM are on file in the City of Del Mar.

2. Where technical or scientific data is presented to the City indicating the base flood elevation will increase or decrease as a result of physical changes affecting flooding conditions, the City shall submit the data to FEMA in accordance with the code of federal regulations so that upon confirmation by FEMA, risk premium rates and floodplain management requirements will be based on current data and the mapped boundary can be amended accordingly (Title 44 Section 65.3). The information shall be submitted to FEMA as soon as practicable, but not later than 6 months after the date of final action approving any physical changes that will affect flood conditions.

Commented [AL3]: This reference within the City's ordinance is being required by FEMA and the California Department of water Resources.

3. A Letter of Map Change (LOMC) is a formal document that communicates an official modification to an effective FIRM. LOMCs are issued in place of a physical alteration and re-publication of the map.

4. The set of effective FIRM, FIS, and National Flood Hazard Layer Database, as well as any effective LOMCs that have been issued to revise or amend the FIRM or FIS, collectively comprise FEMA's official flood hazard determination for a given area.

C. The zone boundaries identified shall not imply that land outside of the Floodplain Overlay Zone, or that development permitted within the Overlay Zone, will be free from flooding or flood damage.

D. All real estate transactions within the boundary of this Overlay Zone shall disclose that the property is located in the Floodplain Overlay Zone.

30.56.030 Definitions

Unless specifically defined below, words or phrases used in this Chapter shall be interpreted so as to give them the meaning they have in common usage and to give this Chapter its most reasonable application.

A. "Area of Shallow Flooding" [No change]

B. "Area of Special Flood Hazard" shall mean an area having special flood or flood-related erosion hazards, and which are designated on an FIRM or FIRM as Zone A, AO, A 1-30, AE, A99, AH, V1-30, VE, or V.

DRAFT LCPA: Floodway Zone, Coastal Bluff Overlay Zone, Floodplain Overlay Zone
(10/1/18)

~~C~~ "Base Flood" shall mean a flood having a one percent chance of being equaled or exceeded in any year. "Base Flood" shall mean the same as "100-year Flood".

~~D~~. For the purposes of this Chapter, "Basement" shall mean, for the purpose of Chapter 30.56 only, any area of a building having its floor below ground level - on all sides.

~~E~~. "Breakaway Wall" [No change in text]

~~F~~. "Coastal High Hazard Area" shall mean an area of special flood hazard extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic forces. Such areas are subject to high velocity waters, including coastal and tidal inundation or tsunamis. Coastal High Hazard Areas are designated on the Flood Insurance Rate Map (FIRM) as being in Zone V1-30, VE or V.

~~G~~ "Development" [No change in text]

~~H~~. "Director" [No change in text]

~~I~~ "Encroachment" shall mean, for the purpose of Chapter 30.56 only, the advance or infringement of uses, plant growth, fill, excavation, buildings, permanent structures or development into a floodplain that may impede or alter the flow capacity of a floodplain.

"Existing Development" shall mean any structure or development that was lawfully established, altered, and maintained pursuant to the Del Mar Municipal Code (or preceding San Diego County ordinances).

~~J~~ "Flood Insurance Rate Map (FIRM)" [No change in text]

~~K~~ "Flood Insurance Study" shall mean the official report provided by the Federal Emergency Management Agency that includes flood profiles, the Flood Insurance Rate Map (FIRM), and Flood Boundary and Floodway Map, and the water surface elevation of the base flood.

~~L~~ "Floodplain" or Flood-prone area" [No change in text]

~~M~~. "Flood-proofing" [No change in text]

~~N~~. "Floodway" [No change in text]

"Freeboard" means a factor of safety usually expressed in feet above flood level for purposes of floodplain management. Freeboard tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, bridge openings, and the hydrological effect of urbanization of the watershed.

O. through Q. [No change]

"Historic Structure" means any structure that is:

1. Listed individually in the National Register of Historic Places or California Register of Historic Places;
2. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district; or
3. Listed individually on a local inventory of historic places.

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Commented [AL5]: This reference within the City's ordinance is being required by FEMA and the California Department of water Resources.

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~~R.~~ "Lowest Floor" [No change in text]

~~S.~~ "Manufactured Home" shall mean a building, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. For floodplain management purposes, the term "manufactured home" also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days, but does not include Recreational Vehicles as defined in this Chapter.

~~T.~~ "Manufactured Home Park or Subdivision" shall mean a parcel (or contiguous parcels) of land divided into two or more lots to be used for manufactured homes.

~~U.~~ "Mean Sea Level" [No change in text]

~~V.~~ "New Construction" shall mean, solely for the purposes of FEMA determining NFIP insurance rates, structures for which the "start of construction" commenced on or after the date of adoption of this ordinance effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures.

W. "Obstruction" [No change]

X. "One-hundred Year Flood" [No change]

~~AA.~~ "Recreational Vehicle" shall mean a vehicle, which is:

1. Built on a single chassis;
2. 400 square feet or less in size;
3. Designed to be self-propelled or permanently towable by a light vehicle light-duty truck; and
4. Designed primarily not for use as a permanent dwelling, but as a temporary living quarters for recreational camping or travel.

~~BB.~~ "Special Flood Hazard Area (SFHA)" shall mean an area having special flood, mudslide or flood related erosion hazards and which is shown on an FHMB or FIRM as Zone A, AO, A1-A30 A1-30, AE, A99, AH, AE, M, V1-V1-30, VE, or V.

~~CC.~~ "Start of Construction" [No change in text]

~~DD.~~ "Structure" [No change in text]

~~EE.~~ "Substantial Damage" [No change in text]

~~FF.~~ "Substantial Improvement"

1. "Substantial Improvement" shall mean any repair, reconstruction or improvement of a structure, when, pursuant to a determination by the Director, the cost of the repair, reconstruction or improvement equals or exceeds fifty percent of the market value of the structure either:

- a. Before the improvement or repair is started, or
- b. If the structure has been damaged 50% or more and is being restored, as it existed before the damage occurred.

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2. For purposes of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure.

3. The term "Substantial Improvement" does not however, include either:

- a. Any project for improvement of a structure to comply with existing state or local health, sanitary or safety code specifications which are solely necessary to assure safe living conditions, or
- b. Any alteration of a structure listed on the National Register of Historic Places or a State Inventory California Register of Historic Places.

~~GG.~~ "Variance" shall mean a grant of relief from the floodplain requirements of this ordinance in accordance with Section 30.56.080, which ~~permits construction in a manner that would otherwise be prohibited by this ordinance~~ for the purpose of Chapter 30.56 shall not require a Variance application pursuant to Del Mar Municipal Code Chapter 30.78.

"Violation" means, solely for the purposes of FEMA determining NFIP flood insurance program compliance, the failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure without a required FEMA Elevation Certificate or other evidence of compliance is presumed to be in violation until such time as that documentation is provided.

~~HH.~~ "Water surface elevation" [No change in text]

~~II.~~ "Watercourse" [No change in text]

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30.56.040 Allowed Uses:

The following uses are allowed within the Floodplain Overlay Zone, subject to the receipt of a Floodplain Development Permit and all other permits required by this Title. **Unless otherwise specified herein, allowable uses in the Floodplain Overlay Zone shall be limited to the following subject to the receipt of required permits in accordance with Section 30.56.050:**

- A. Any use **or accessory use** permitted in the underlying zone ~~or~~ **and applicable overlay** zones, subject to the same conditions and restrictions applicable to such ~~underlying zone~~ ~~or~~ zones.
- B. Any irrigation, drainage or flood control structure or facility, and/or any public facility or improvement necessary for maintaining a lagoon, waterway or floodway system.

30.56.045 Floodplain Development Permit Required Development Regulations for the Floodplain Overlay Zone

- A. ~~It shall be unlawful for any person to engage in the implementation of a project that involves new construction or the substantial improvement to an existing structure without first having obtained a Floodplain Development Permit, when such Permit is required pursuant to this Chapter. Prior to development in the Floodplain Overlay Zone, required permits shall be obtained in accordance with Section 30.56.050.~~
- ~~B. No building permit or other development permits shall be issued relating to a structure for which a Floodplain Development Permit is required until the Floodplain Development Permit is obtained.~~
- B. **Shoreline protective devices are permitted only where consistent with the Beach Overlay Zone (Chapter 30.50) or as otherwise provided for by the California Coastal Act to protect existing development.**
- C. **No new basements or expansion of existing basements shall be allowed in the AE or VE zones.**
- D. **Relief from the requirements in Chapter 30.56 may be requested with an application for a Floodplain Development Permit in accordance with Section 30.56.080 without need for a Variance application.**

30.56.050 Floodplain Development Permit Procedure. Required Permits for Development in the Floodplain Overlay Zone

- A. **Development in the Floodplain Overlay Zone requires approval of the following permits, unless the development is limited to interior modifications or repairs, or exterior repairs, alterations or maintenance that does not increase the footprint of an existing structure:**
 - 1. **Floodplain Development Permit in accordance with Section 30.56.050**
 - 2. **Coastal Development Permit pursuant to Chapter 30.75. Notwithstanding any other provision, the replacement of a structure destroyed by disaster shall be**

exempt from a Coastal Development Permit where the replacement structure conforms with all of the following:

- a. Complies with existing zoning requirements
 - b. Is for the same use as the destroyed structure
 - c. Does not exceed the floor area, height, or bulk of the destroyed structure by more than 10 percent
 - d. Is sited in generally the same location on the affected property as the destroyed structure
3. In accordance with the California Public Resources Code Section 30010, this Chapter is not intended, and shall not be construed as authorizing any public agency acting pursuant to this Chapter to exercise their power to grant or deny a permit in a manner which will take or damage private property for public use, without payment of just compensation therefor. This section is not intended to increase or decrease the rights of any owner of property under the Constitution of the State of California or the United States.

An application for a Floodplain Development Permit shall be submitted to the Director on forms provided by the City together with an application fee set by City Council resolution.

- B. The Floodplain Development Permit application material shall include data and certifications prepared by a registered engineer or architect as necessary to provide supporting calculations and studies for all information required on the application. The application material, which shall include, but not be limited to:
1. The elevation, expressed in relation to NGVD, of all floors (including basements) of all proposed and existing structures of the project site;
 2. The proposed elevation, expressed in relation to NGVD, of all proposed flood proofing; ~~and~~
 3. A description of the extent to which any watercourse will be altered or relocated as a result of the proposed development; and
 4. Certification by a registered professional engineer/architect that all design and methods of construction meet elevation and anchoring standards per the code of federal regulations (Title 44 Section 60.3).
- C. Upon submission of a complete application and payment of the application fee, the Director shall provide notice of the filed application for a Floodplain Development Permit, with members of the public given the opportunity to review the application at

Commented [AL14]: This reference within the City's ordinance is being required by FEMA and the California Department of Water Resources.

City Hall, and the opportunity to submit written information to the Director. Notice shall be provided:

1. In accordance with the noticing requirements for public hearings stated in this Title, for discretionary permit applications;
 2. Through notification to adjacent local agencies and the applicable State coordinating agencies, and through submitting evidence of such notification to the Federal Emergency Management Agency and the Federal Insurance Administration.
- D. A determination on the **Floodplain Development Permit** application shall be made by the Issuing Authority as set forth below:
1. For applications, which have been deemed to be in compliance with all of the applicable provisions of this Chapter, the Director of Planning and Community Development shall be the Issuing Authority for the Floodplain Development Permit.
 2. For applications which do not meet one or more of the applicable provisions of this Chapter and for which relief from such provisions is requested by the applicant **in accordance with Section 30.56.080**, the Planning Commission shall be the Issuing Authority for the Floodplain Development Permit.
- E. The Issuing Authority for the Floodplain Development Permit shall review the application to ensure that all other required state and federal permits are obtained, and shall approve, conditionally approve, or deny the application based upon the regulations of this Chapter.
1. The Issuing Authority may impose conditions in the permit as necessary and or authorized to ensure the project's continued compliance with the provisions of this Chapter.
 2. **All Floodplain Development Permits shall require that prior to the issuance of a Building Permit, the applicant shall record a notice that acknowledges the property is located in the Floodplain Overlay Zone.**
- F. For a period of at least five years following the date of submittal of a Floodplain Development Permit application, the Director shall maintain a record of all information submitted as part of the application, including the certifications where base flood elevation is utilized, of lowest floor and of all proposed finished floor elevations and ~~elevations of flood proofing elevations~~ required pursuant to this Chapter and the code of federal regulations (Title 44 Section 60.3).
- G. Upon a determination on the application by the Issuing Authority, the Director shall post a notice of determination at City Hall. Such Notice shall provide that the determination will be final in ten days unless an appeal to the City Council is filed in accordance with the provisions of this code.

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30.56.060 General Grounds for Application Approval/Denial.

The application for a Floodplain Development Permit shall be approved if the Issuing Authority makes a finding that the proposal meets and is consistent with each of the applicable findings shown below, **unless relief is granted in accordance with Section 30.56.080**. The failure of the proposal to meet and be consistent with each of the applicable findings shown below shall be grounds for denial of the application. Such denial shall be supported by written findings of fact by the Issuing Authority as to how the application fails to meet one or more of the following findings:

The proposed new construction or substantial improvement:

- A. Will not violate the building or zoning regulations of the City.
- B. Will be anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.
- C. Will be constructed with materials and utility equipment resistant to flood damage.
- D. Will use methods and practices that minimize flood damage.
- E. Will involve a residential structure in an A, AE or AH Zone, and will have the lowest floor (including basement) of such structure elevated at or above the base flood elevation.
- F. Will involve a manufactured home that will be elevated on a permanent foundation such that the lowest floor is at or above the base flood elevation and is securely anchored to an adequately anchored foundation system.
- G. Will involve a nonresidential structure and will have the lowest floor (including basement) elevated to or above the base flood level or, together with attendant utility and sanitary facilities will be flood proofed below the base flood level to the extent that the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy, as certified by a registered professional engineer or architect.
- H. Will be in an area of shallow flooding (Zone AO on the community's FIRM) and will have the lowest floor (including basement) elevated at or above the depth number indicated on the most current FIRM; or if there is no depth number on the most current FIRM, the structure will be elevated at least three feet above the highest adjacent grade. As an alternative, nonresidential structures, together with attendant utility and sanitary facilities, may be flood proofed to that level as specified in this Chapter.
- I. Will be in Zones AO and AH on the FIRM and will have adequate drainage paths around structures situated on sloping ground, to guide floodwaters around and away from said structures.
- J. Will involve the flood proofing of a nonresidential structure using a design and/or methods of construction that are in accordance with accepted standards of practice for flood proofing or

which will extend the flood proofing to an elevation which is required pursuant to the provisions of this Chapter.

K. Will have all new and replacement water supply and sanitary sewage systems designed to minimize or eliminate infiltration of flood waters into the system and discharges from the system into flood waters.

L. Will have on-site waste disposal systems located to avoid impairment to them, or contamination from them, during flooding.

M. Will have all electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

N. Will have all fully enclosed areas below the lowest floor that are subject to flooding designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters with designs certified by a registered professional engineer or architect; or will have at least two openings no more than one foot above grade with a total net area of at least one square inch per square foot of flooded area.

O. Will be located in an area that is reasonably safe from flooding.

P. Will not adversely affect the carrying capacity of areas where base flood elevations have been determined but a floodway has not been established. For purposes of this Section, “adversely affects” shall mean that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will increase the water surface elevation of the base flood elevation more than one foot at any point.

Q. Will not be sited and designed so as to require the construction or installation of flood protective works.

Relief from the requirements in Chapter 30.56 may be requested with an application for a Floodplain Development Permit in accordance with Section 30.56.080 without need for a Variance application.

30.56.070 Additional Grounds for Application Approval/Denial (Coastal High Hazard)

A. An application for a Floodplain Development Permit for a project located in an area designated as being within the Coastal High Hazard Sub-zone shall be approved if the Issuing Authority makes a finding that the proposal meets and is consistent with each of the applicable findings shown below, unless relief is granted in accordance with Section 30.56.080. The failure of the proposal to meet and be consistent with each of the applicable findings shown below shall be grounds for denial of the application. Such finding for denial shall be supported by written findings of fact by the Issuing Authority as to how the application fails to meet one or more of the following findings:

- ~~A.~~ 1. The new construction or substantial improvement will not violate provisions of this or other sections of this Chapter, including those regarding General Grounds for Application Denial;
- ~~B.~~ 2. The new construction or substantial improvement will be located landward of the ordinary high water mark (commonly known as the reach of mean high tide line), unless otherwise approved by the State Lands Commission;
- ~~C.~~ 3. The new construction or substantial improvement will not involve the use of fill for structural support of buildings, unless relief is granted in accordance with Section 30.56.080;
- ~~D.~~ 4. The new construction or substantial improvement, unless relief is granted in accordance with Section 30.56.080, will be elevated on pilings or columns such that:
 - ~~1.~~ a. The bottom of the lowest horizontal structural member of the lowest floor (excluding pilings or columns) is elevated at or above the base flood elevation; or
 - ~~2.~~ b. The pile or column foundation and the attached structure is anchored to resist flotation, collapse or lateral movement due to the effect of wind and water loads having a one percent chance of being equaled or exceeded in any given year, acting simultaneously on all building components.
- ~~E.~~ 5. The new construction or substantial improvement will have the space below the lowest floor free of obstruction or constructed with non-supporting breakaway walls, open wood lattice work or insect screening intended to collapse under wind and water load without causing collapse, displacement or other structural damage to the elevated portion of the building or supporting foundation system; or such enclosed space is non-habitable and is not useable for other than parking of vehicles, building access, or storage.
- ~~B.~~ If additional information is needed to more fully assess the future risk of flood hazards to the proposed development over its economic life and substantiate a decision on the permit, at the discretion of the Planning Director or Issuing Authority, the applicant may be required to provide funding for an independent, third party analysis of the coastal hazards to be prepared by a licensed professional with expertise in coastal processes.
- ~~C.~~ Relief from the requirements in Chapter 30.56 may be requested with an application for a Floodplain Development Permit in accordance with Section 30.56.080 without need for a Variance application.

30.56.080 Relief from Regulations

An application for a Floodplain Development Permit may include a request for relief from one or more of the regulations contained in this Chapter **without need for a Variance application**. The Issuing Authority for the Permit may approve the request only upon making each of the following written findings of fact that:

- A. The failure to grant the request would result in exceptional hardship to the applicant or to adjacent properties;
- B. The granting of the request will not:
 - 1. Result in increased flood heights either on the project site or on surrounding properties,
 - 2. Result in additional threats to public safety,
 - 3. Result in extraordinary public expense,
 - 4. Create a public or private nuisance,
 - 5. Cause fraud on or victimization of the public, or
 - 6. Conflict with other City regulations; and
- C. The deviation from the requirements of the Chapter is the minimum necessary to afford relief, considering the flood hazard associated with the site.

30.56.082 Acknowledgment of Hazard/Waiver of Liability for Projects Approved with Relief from Chapter

The approval of a project which involves relief from the provisions of this code shall be conditioned to require that the applicant acknowledges that the construction of the project in the manner proposed and approved may result in increased premium rates for flood insurance and that such construction increases risks to life and property. The acknowledgment shall be accompanied by a Waiver of Liability, holding the City harmless from damages, which may result from project implementation. The Acknowledgment and Waiver shall be provided in a covenant to be recorded against the deed for the property and to run with the land.

Any applicant to whom a variance relief from the provisions of this Chapter is granted shall provide a written affidavit acknowledging that implementation of a project to construct a structure below the base flood level elevation may result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 worth of coverage. A copy of the affidavit notice shall be recorded against the deed for the property by the Floodplain Administrator in the Office of the County Recorder. The recorded affidavit shall run with the land so that it appears in the chain of title of the affected parcel. The covenant shall be of a form and content acceptable to the Director of Planning and Community Development.

The Floodplain Administrator shall maintain a record of action on all applications for a Floodplain Development Permit, all variance actions, including justification for actions that involve authorization for relief from the provisions of this Chapter. All actions that involve authorization for relief from the provisions of this chapter shall be reported in the City's biennial report submitted to the Federal Insurance Administration of the Federal Emergency Management Agency.

30.56.090 Additional Regulations Relating to the Storage of Materials or Equipment within a the Area of Special Flood Hazard Area.

The following restrictions shall apply for to properties located in areas designated as being located within a Special Flood Hazard Area pursuant to the provisions of this Chapter.

- A. It shall be prohibited to store or process materials that, in a time of flooding, may become buoyant, flammable, explosive, or could be injurious to human, animal or plant life.
- B. The storage of other material or equipment may be allowed if the storage area will not be subject to major damage by floods and if the stored material is firmly anchored to prevent flotation or is readily removable from the area within the time available after flood warning.

30.56.100. Warning and Disclaimer of Liability.

The standards in this Chapter are reasonable for regulatory purposes and are based on scientific and engineering considerations largely determined by the Federal Emergency Management Agency. Floods may occur which result in damage. This Chapter is not intended to imply that development in accordance with these standards is immune from flood damage or that development on properties outside the areas designated as Special Flood Hazards Areas, Areas of Mudslide (i.e., areas of mudslide or mudflow) will continually be free from flooding or flood damages. In including and enforcing the provisions of this Chapter, the City, including any officer or employee thereof, shall not assume liability for any flood damages that result from reliance on this Chapter or from any decision or action on a permit application lawfully made thereunder.

[This Chapter of the Municipal Code forms a portion of the City of Del Mar Local Coastal Program Implementing Ordinances. The regulations found within this Chapter are not subject to "relief" through the Del Mar Variance process. Exceptions to, or relief from, the requirements found within this Chapter are limited to those specified within the language of this Chapter or found within other Chapters of the Implementing Ordinances. Where there is a conflict between the language of this Chapter and other portions of the Del Mar Municipal Code, the language of this Chapter shall take precedence.]

Del Mar's Floodplain Development/Flood Management Program

Flood Management: The City currently participates in the Federal Emergency Management Agency's (FEMA) National Flood Insurance Program (NFIP) and San Diego County Multi-Jurisdictional Hazard Mitigation Plan (HMP). The City Council last updated Del Mar's local portion of the HMP on March 5, 2018. NFIP and HMP participation makes flood insurance available to residents, makes the City eligible for pre-disaster grants and assistance to apply towards projects that minimize long term risks, and makes the City eligible for disaster relief assistance. During a declared state and federal disaster, the City relies upon reimbursement from FEMA and the California Office of Emergency Services (OES) to cover emergency response efforts. For example, on September 4, 2018, the Council accepted a FEMA/OES grant (\$7,418) for partial reimbursement of the January 18-23, 2017 winter storm response efforts and emergency protective measures. Future funding will be jeopardized if the City does not meet the hazard mitigation requirements.

FEMA's Flood Zone Maps: As part of the flood management program, FEMA maps the Floodway and Floodplain areas, designates FEMA flood zones, and applies the flood zones to property locations. FEMA's zones for special flood hazard areas have corresponding limits on design that relate to the type of flood vulnerability. The City's Floodplain Overlay Zone applies per FEMA's official flood hazard determination, which for a given area includes the effective Flood Insurance Rate Map (FIRM) and any Letters of Map Change (LOMCs). When FEMA updates the FIRM, they provide a draft to all jurisdictions effected by the FIRM map panel. If not appealed, the map automatically becomes effective 6 months from the date of their Letter of Determination. To remain in good standing with FEMA, the City must adopt regulations from FEMA's model ordinance as a minimum to effectively apply limits per the FEMA flood insurance rate map.

Relationship to LCP update in process: Existing flood management regulations are located in the Floodway Zone (DMMC Chapter 30.29) and Floodplain Overlay Zone (DMMC Chapter 30.56) of the certified Local Coastal Program (LCP). To amend these regulations it requires coordination with FEMA and approval of a Local Coastal Program Amendment (LCPA) by the Coastal Commission. The City is currently processing a zone code amendment and LCPA to update the Floodway Zone and Floodplain Overlay Zone regulations in response to requests by FEMA and California Department of Water Resources. Permits for beachfront properties with no effective FEMA flood zone will not be subject to FEMA's design requirements until FEMA's map update becomes effective. When FEMA's FIRM becomes effective it automatically applies.

Status of FEMA's map: FIRM maps are approved by FEMA- not the City. The FIRM update for the San Diego region is currently in process and accounts for flooding based on total water levels, wave run up, and overtopping of sea walls, but does not account for sea level rise. FEMA's appeal period expired January 29, 2018. The review/appeal timelines are set by federal law. There is no flexibility for local jurisdictions to request an extension of time; and local action is not part of the process. FEMA expects to send the Letter of Determination in 2020 to indicate when the new map will be effective (6 months from date of letter). The unexpected delay is because FEMA is working with the Port of San Diego on a technical issue relating to that portion of the FIRM panel. In the meantime, the remainder of the map panel is being held in abeyance, which means FEMA's map changes for Del Mar will not apply until the FIRM becomes effective for the region as a whole. As is currently available, an applicant may request and process a LOMC to the satisfaction of FEMA to modify or remove a FEMA flood zone. This process is available to anyone seeking a flood map revision based on specific adaptive design measures in place to reduce the risk of flooding.

Coastal Development and Local Coastal Program Management

Coastal Zone Management: The City of Del Mar has an adopted Local Coastal Program (LCP) that has been certified by the Coastal Commission, which allows the City to have local permit authority over Coastal Development Permit (CDP) issuance consistent with the provisions of the certified LCP and the Coastal Act. The LCP contains two parts: the LCP Land Use Plan policies (certified in 1993) and the LCP implementing regulations (certified in 2001) and the associated maps and exhibits as certified by the Coastal Commission.

Coastal Development Process: All properties in the City of Del Mar are located in the Coastal Zone as defined by the Coastal Act and are subject to the provisions of the certified LCP. Applications for Coastal Development Permits are subject to Chapter 30.75 of the Del Mar Municipal Code and certified LCP. The standard of review for a CDP is the City's certified LCP. CDP decisions must be supported by written findings of fact to show that the use is permitted and that the proposal meets the LCP requirements (i.e. public access and recreation, public view protection, and resource protection policies of the Coastal Act). For all projects proposing shoreline protection, the development is required to be consistent with the existing LCP provisions for the Beach Overlay Zone (Ch. 30.50) and Setback Seawall Permits (Ch. 30.51).

Decisions on CDPs: The decision maker for a CDP application depends on the property location and the scope of the proposed project. Most CDPs are issued by the City; however, some CDPs and amendments thereto, are required to be processed and reviewed by the Coastal Commission (due to location in the Coastal Commission's original jurisdiction boundary); and in some instances a project may require that the applicant obtain permits from both the City and Coastal Commission. Permits that are issued by the City are appealable to the Coastal Commission if the property is located in an appealable area (per Coastal Act Section 30603), which generally includes properties between the sea and first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach, and all areas within 100 feet of wetlands and streams. All CDPs in North Beach are appealable.

Relationship to LCP Update in process: A Local Coastal Program Amendment (LCPA) is required to add, modify, or remove any provisions from the existing certified LCP. The City is currently processing an LCPA to update the City's existing LCP shoreline hazard control policies and existing LCP regulations in the Floodway Zone (Ch. 30.29), Coastal Bluff Overlay Zone (Ch. 30.55), and Floodplain Overlay Zone (Ch. 30.56). The LCPA is needed to address hazards (flooding, erosion, and sea level rise) that are a threat to the future viability of the City. The LCPA facilitates long-term strategies to protect the community and reduce the risk of hazards. The LCPA also meets state grant agreement requirements and FEMA model ordinance requirements that will avoid fiscal impacts to the City and results in no change in development potential.

In accordance with City Council direction on October 1, 2018, the proposed LCPA was revised to rely on the existing Coastal Bluff Overlay Zone and Floodplain Overlay Zone boundaries. Per existing local and federal requirements, the Floodplain Overlay Zone will continue to rely on the current FEMA FIRM map in effect, any Letters of Map Change issued, and any subsequent FEMA map updates thereto once FEMA's Flood Insurance Rate Map (FIRM) becomes effective. FEMA expects the latest FIRM for Del Mar to take effect in 2020. In accordance with the existing Floodplain Overlay Zone and federal law, the updated FIRM map will automatically apply per FEMA's updated determination of the flood hazard area without need for local action. See Report Attachment E.

CALIFORNIA COASTAL COMMISSION

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September 28, 2018

Dwight Worden
City of Del Mar
1050 Camino del Mar
Del Mar, CA 92014-2698

Re: City of Del Mar – Sea Level Rise Local Coastal Program Amendment Draft

Dear Mayor Worden,

Thank you for the opportunity to provide the following comments on Del Mar's draft September 2018 version of the City's Local Coastal Program Amendment (LCPA), including draft amendments to the Land Use Plan (LUP) and Implementing Ordinances. These drafts were prepared with support from a Round 3 Coastal Commission LCP Grant, pursuant to Grant Agreement LCP-16-13 A/1.

We appreciate the collaborative process that the City has conducted over the past three years toward the development of this LCPA that has included relevant stakeholders, community members, and Commission staff. These efforts have been focused toward the creation of a plan that will ensure that the City of Del Mar will remain a resilient community going forward in the face of likely hazards associated with future sea level rise. We commend the scientific approach utilized in the City's Vulnerability Assessment and Sediment Management Plan specifically, both of which identify and analyze current and future threats to the City from flooding and accelerated erosion due to changing future ocean conditions.

As a part of this process going forward, it is also important to acknowledge the City's existing LCP, and more specifically the Beach Overlay Zone, which includes many provisions and agreements that allow for protection of the City's coastal communities. The current efforts included in this LCPA are not meant in any way to diminish or significantly alter the implementation of the existing LCP; but rather, they are intended to provide additional resiliency and options going forward given the existing and future coastal hazards identified in the City's Vulnerability Assessment. This work is essential in preserving the valuable coastal resources and community that help make Del Mar such an important and vibrant coastal destination. Furthermore, we want to be clear that Commission staff is supportive of the emphasis the City has placed on beach nourishment as an effective and appropriate short-term adaptation strategy, and we understand the reasons the City staff has chosen not to introduce managed retreat as an adaptation strategy at this time. We agree that future assessment of additional adaptation strategies will be warranted when new or amplified coastal hazards are realized. In anticipation of these future changes, we do think the City should be establishing thresholds or triggers for when reassessment will occur.

We look forward to continuing to work together on the amendment drafts. Please consider the following suggestions as you review this draft LCPA for approval and future submittal to the Commission.

1. **Incorporate the City’s Vulnerability Assessment, Adaptation Plan, and Sediment Management Plan by reference.** We recommend the City incorporate the “Coastal Hazards, Vulnerability, and Risk Assessment” (2016), “Sea-Level Rise Adaptation Plan” (2018) and “Sediment Management Plan” (2018) explicitly by reference into the LUP amendment language.
2. **Set clear goals in alignment with the City’s Adaptation Plan to address sea level rise.** The LUP should directly incorporate the goals and principles listed on page ES-2 of the Adaptation Plan into the LUP text. For example, maintaining a public beach that is walkable and capable of providing public access, recreational opportunities, and economic benefits as well as protection from coastal flooding and increased bluff erosion should be an identified goal. We also recommend the LUP include a general goal addressing impacts from sea level rise, including a reference to the LUP’s intention to prepare the Del Mar community for resilience in the face of sea-level rise and minimize property damage resulting from coastal and river flooding, and bluff erosion.
3. **Establish periodic review to identify the best available science and develop long-term adaptation planning triggers.** The LUP should emphasize that the City has identified short-term strategies to deal with SLR (e.g., beach nourishment) but also acknowledge that the Sediment Management Plan and Adaptation Plan identify that this strategy will not be feasible to implement indefinitely:

Nourishing and retaining the sand on the beach below the southern bluffs could provide short-to medium term benefits of maintaining a beach for ecology and recreational use and reducing wave runup onto and erosion of the bluff toe. In the long-term, beach nourishment and retention may become more expensive if sand sources become limited or if the amount of sand required increases with sea-level rise. [Sediment Management Plan, pg. 41]

Beach nourishment [in North Beach] may be effective with up to 2 feet of sea-level rise, and potentially more, depending on variables such as the availability of sand sources and funding, and whether neighboring beaches are also being nourished. [Sediment Management Plan, pg. 47]

While beach nourishment is likely to be feasible for lower amounts of sea-level rise, the feasibility of larger scale beach nourishment with sea-level rise of about 3 to 5 ft at Del Mar is uncertain, primarily due to uncertainties in the regional demand and availability for sand sources (Section 5.2). [Adaptation Plan, pg. 64]

As a result, and to prepare the City for longer-term planning, the LUP should also identify some physical (e.g., at X feet of SLR) or temporal (e.g., by a certain year)

triggers that would require an LUP amendment to evaluate the best available science and develop additional adaptation strategies for the longer-term. Triggers should allow for enough time to develop the LUP amendment and proactively implement relevant adaptation strategies before the foreseeable hazards begin to impact coastal resources and the community. In addition, the policy should require the City to consider LCP amendments to all of their Overlay Zones, and associated policies and standards when amendments are necessary to avoid significant conflicts with an updated Adaptation Plan. We recommend monitoring and evaluation include tracking and keeping records of coastal and San Dieguito River flooding and storm damage events and reviewing the results of readily available information regarding sea level rise trends and projections, beach width profiles, bluff-top erosion rates, San Dieguito River channel deposition rates, and San Dieguito Lagoon wetland habitat acreages.

4. **Modify the “Transitional Subarea” of the Coastal Bluff Overlay Zone to require geotechnical analyses, and identify a clear process for when these properties would be subject to all of the additional requirements contained within the Bluff Overlay Zone.** The September 2018 draft of the LCP Amendment proposes a “Transitional Subarea” to apply to properties fronting the bluff from 7th to 15th Streets as described in Chapter III Section C. Coastal Bluffs and Vulnerable Slopes. The properties in this area are not subject to any special permit or requirements set forth in the draft amendment, including requirements to submit a geotechnical report, or requirements to waive future shoreline protection. Based on the City’s Vulnerability Assessment, these overlay zones are subject to sea level rise hazards by 2100, within the lifetime of new development or redevelopment in these locations. Due to the current alignment of the railroad corridor, the properties in this new proposed zone are not currently subject to coastal erosion; however, they will be especially if the rail corridor moves inland, and thus it is crucial to understand when and what types of hazards may emerge to aid in siting and designing the development in a way that it will avoid hazards over its development life, in addition to providing notice to property owners. We strongly recommend the LUP be amended to require geotechnical analyses in the Transitional Subarea and/or at minimum include a clear policy requiring review and possible boundary amendment of the Coastal Bluff Overlay Zone subareas within five years as described in the introduction to Chapter III, Section C of the LUP.
5. **Require geotechnical or hazards studies for all development subject to current or future coastal hazards.** The current draft Implementing Ordinances require a geotechnical report for coastal development permit applications in the Coastal Bluff Overlay Zone (30.55.060.2) but not in other overlay zones subject to current or future coastal hazards. We recommend the Implementing Ordinances require development in all hazard overlay zones be evaluated by reports that are prepared by a licensed civil engineer with expertise in coastal engineering and geomorphology or other suitably qualified professional. These reports should be based on the best available science, consider the impacts from the high projection of sea level rise for the anticipated duration of the proposed development, demonstrate that the development will avoid or minimize impacts from coastal hazards, and evaluate the foreseeable effects that the development will have on coastal resources over time (including in terms of impacts on public access,

shoreline dynamics, natural landforms, natural shoreline processes, and public views) as project impacts continue and/or change over time, including in response to sea level rise.

6. **Modify the “existing development” definition in both the LUP and Implementing Ordinances so as not to include new development or redevelopment permitted after January 1, 1977.** As described in the Commission’s 2015 Sea Level Rise Policy Guidance and reiterated in the March 2018 Draft Residential Adaptation Policy Guidance, the Commission interprets the term “existing structures” in Section 30235 as meaning structures that were in existence on January 1, 1977—the effective date of the Coastal Act. In other words, the directive to permit shoreline armoring in certain circumstances (Section 30235) applies to development that existed as of January 1, 1977. This interpretation is the most reasonable way to construe and harmonize Sections 30235 and 30253, which together evince a broad legislative intent to allow armoring for development that existed when the Coastal Act was passed, when such development is in danger from erosion, but avoid such armoring for new development now subject to the Act. We acknowledge the controversy surrounding this interpretation. Thus, we recommend the City define it as such, to ensure consistency with the Commission’s approach to define existing development as permitted before January 1, 1977 in its original jurisdiction. The amendment could emphasize that should there be future statutory or regulatory clarification in Coastal Act Section 30235 regarding which “existing structures” are allowed to be protected by new shoreline protection devices, then those clarifications should be used to implement the relevant policies.
7. **Address adaptation strategies for critical infrastructure.** The Vulnerability Assessment identifies a suite of Del Mar’s critical infrastructure vulnerable to sea-level rise hazards. Chapter III.B Policy III-2.f supports “relocation of the railroad and other public infrastructure from vulnerability areas,” and Chapter III.E Policy III-12.d seeks to enhance public safety by “protecting public infrastructure and property from sea level rise and flooding risks.” We recommend the LUP amendment include additional language that clearly requires all threatened critical public infrastructure be managed to be safe from SLR hazards and include adaptation strategies that address vulnerabilities, including: (1) Ensuring functional continuity of the critical services at risk from sea-level rise and extreme storms until such time that the infrastructure can be relocated or redesigned to avoid sea-level rise risks; (2) Developing accommodation strategies to increase the resiliency of critical infrastructure by raising, flood-proofing, or redesigning infrastructure at risk of damage from sea-level rise impacts; (3) Developing protection strategies, such as hard protective devices or sand replenishment, to ensure the continuation of existing needed services until such time that the services can be redesigned or relocated to avoid sea-level rise risks; and (4) Developing strategies for retiring or replacing/removing infrastructure and public facilities at risk of damage from sea-level rise impacts that may occur over the economic life of the structure.
8. **Expand the Implementing Ordinance’s definition for “Substantial Improvement.”** The draft’s current definition of “substantial improvement” is based on whether the repair, reconstruction, or improvement equals or exceeds fifty percent of the market value of the structure. We recommend this definition be expanded to bring it more in line with

the Coastal Commission's approach to defining "redevelopment" so that the City's "substantial improvement" term can be defined not only in terms of market value, but also in terms of the percent change in the structure itself. We recognize developing a new definition for the City may be difficult at this stage in the process, and if so, we are willing to work with the City on whether this is addressed at this time or during the next LCP Update.

9. **Expand the deed recordation policies in the Implementing Ordinances for the overlay zones to clearly disclose hazards and acknowledge assumption of risk.** We recommend the deed restriction policies for the Coastal Bluff Overlay Zone (30.55.060.B.2) and the Floodplain Overlay Zone (30.56.050.E.2) be expanded. First, we recommend the language requiring a deed recordation "Indemnifies and holds harmless the City and the California Coastal Commission against any and all liability, claims, damages, and/or expenses arising from any injury to any person or damage to property due to such hazards" be reinserted and augmented to include the Commission pursuant to the underlined language above. We also recommend the recordation requirements be expanded to require deed restrictions on the property that acknowledge and agree (1) the development is located within the Coastal Bluff (or Floodplain) Overlay Zone and is located in a hazardous area, or an area that may become hazardous in the future; (2) to assume the risks of injury and damage from such hazards in connection with the permitted development; (3) that sea level rise could render it difficult or impossible to provide services to the site (e.g., maintenance of roadways, utilities, sewage or water systems), thereby constraining allowed uses of the site or rendering it uninhabitable; (4) that the boundary between public land (tidelands) and private land may shift with rising seas, the structure may eventually be located on public trust lands, and the development approval does not permit encroachment onto public trust land; (5) any future encroachment must be removed unless the Coastal Commission determines that the encroachment is legally permissible pursuant to the Coastal Act and authorizes it to remain, and any future encroachment would also be subject to the State Lands Commission's (or other trustee agency's) leasing approval; and (6) that the structure may be required to be removed or relocated and the site restored if it becomes unsafe or if removal is required.
10. **Include reference to sea level rise as a hazard consistently throughout both the LUP and IP.** We recommend all hazard lists and descriptions explicitly list sea level rise as a known coastal hazard and that references to sea level rise are made consistently throughout both documents as hazards to plan for in both the near-term and the long-term.
11. **Update LUP's reference to the best available science.** The description of Sea Level Rise under section III.A.5 of the LUP should be updated to specify the Ocean Protection Council's *State of California Sea-Level Rise Guidance 2018 Update* as representing the best available science for the State of California.

Thank you again for the opportunity to provide comments to this most recent draft of the City's LCP Amendment. We appreciate and recognize the challenges and sensitivity of this work for

the community, and in particular the shoreline and river valley property owners. We acknowledge that stakeholders want to believe that beach nourishment and/or armoring may always be a satisfactory option but it is simply unrealistic. Therefore, while stakeholders may disagree about the exact timing and nature of the forecasted shoreline and flooding hazards, it is critical for the City to be prepared, and continue work on developing adaptation responses now rather than being caught in a reactive mode when available alternatives or opportunities might have been lost. As a result of this process, Del Mar will have an updated LCP that identifies potential coastal hazards resulting from changes in future sea levels and aligns itself with hazard mitigation requirements at both State and Federal levels. Please do not hesitate to contact me if you have any questions or wish to discuss these comments in further detail.

Sincerely,

A handwritten signature in blue ink, appearing to read 'G. Buhr', with a horizontal line extending to the right.

Gabriel Buhr
Coastal Program Manager

cc (copies sent via e-mail):
Karl Schwing (CCC)
Deborah Lee (CCC)
Madeline Cavelleri (CCC)
Amanda Lee (Del Mar)
Kathy Garcia (Del Mar)